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Briefings on How To Use the Federal Register—
For information on briefings in Atlanta, GA, and
Washington, DC, see announcement on the inside cover of
this issue.

Federal Register



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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

- WHEN:** March 26; at 9 am.
- WHERE:** L.D. Strom Auditorium, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, GA.
- RESERVATIONS:** Call the Atlanta Federal Information Center, 404-331-2170.

WASHINGTON, DC

- WHEN:** March 31; at 9 am.
- WHERE:** Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
- RESERVATIONS:** Beverly Fayson, 202-523-3517

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Title 3—

Executive Order 12586 of March 3, 1987

The President

Amendments to the Manual for Courts-Martial, United States, 1984

By the authority vested in me as President by the Constitution of the United States and by chapter 47 of title 10 of the United States Code (Uniform Code of Military Justice), in order to prescribe amendments to the Manual for Courts-Martial, United States, 1984, prescribed by Executive Order No. 12473, as amended by Executive Order No. 12484 and Executive Order No. 12550, it is hereby ordered as follows:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. R.C.M. 201(e) is amended as follows:

(1) Paragraph (2) is amended to read as follows:

"(2) (A) A commander of a unified or specified combatant command may convene courts-martial over members of any of the armed forces.

"(B) So much of the authority vested in the President under Article 22(a)(9) to empower any commanding officer of a joint command or joint task force to convene courts-martial is delegated to the Secretary of Defense, and such a commanding officer may convene general courts-martial for the trial of members of any of the armed forces.

"(C) A commander who is empowered to convene a court-martial under subsections (e)(2)(A) or (e)(2)(B) of this rule may expressly authorize a commanding officer of a subordinate joint command or subordinate joint task force who is authorized to convene special and summary courts-martial to convene such courts-martial for the trial of members of other armed forces under regulations which the superior command may prescribe."

(2) Subparagraph (3)(A) is amended to read as follows:

"(A) The court-martial is convened by a commander authorized to convene courts-martial under subsection (e)(2) of this rule; or".

(3) The following new paragraphs are inserted at the end thereof:

"(6) When there is a disagreement between the Secretaries of two military departments or between the Secretary of a military department and the commander of a unified or specified combatant command or other joint command or joint task force as to which organization should exercise jurisdiction over a particular case or class of cases, the Secretary of Defense or an official acting under the authority of the Secretary of Defense shall designate which organization will exercise jurisdiction.

"(7) Except as provided in subsections (5) and (6) or as otherwise directed by the President or Secretary of Defense, whenever action under this Manual is required or authorized to be taken by a person superior to—

"(A) a commander of a unified or specified combatant command or;

"(B) a commander of any other joint command or joint task force that is not part of a unified or specified combatant command,

"the matter shall be referred to the Secretary of the armed force of which the accused is a member. The Secretary may convene a court-martial, take other

appropriate action, or, subject to R.C.M. 504(c), refer the matter to any person authorized to convene a court-martial of the accused."

b. Chapter II is amended by inserting the following new Rule following R.C.M. 203:

"Rule 204. Jurisdiction over reserve component personnel

"(a) *Service regulations.* The Secretary concerned shall prescribe regulations setting forth rules and procedures for the exercise of court-martial jurisdiction and nonjudicial punishment authority over reserve component personnel under Articles 2(a)(3) and 2(d), subject to the limitations of this Manual and the UCMJ.

"(b) (1) *General and special court-martial proceedings.* A member of a reserve component must be on active duty prior to arraignment at a general or special court-martial. A member ordered to active duty pursuant to Article 2(d) may be retained on active duty to serve any adjudged confinement or other restriction on liberty if the order to active duty was approved in accordance with Article 2(d)(5), but such member may not be retained on active duty pursuant to Article 2(d) after service of the confinement or other restriction on liberty. All punishments remaining unserved at the time the member is released from active duty may be carried over to subsequent periods of inactive-duty training or active duty.

"(2) *Summary courts-martial.* A member of a reserve component may be tried by summary court-martial either while on active duty or inactive-duty training. A summary court-martial conducted during inactive-duty training may be in session only during normal periods of such training. The accused may not be held beyond such periods of training for trial or service of any punishment. All punishments remaining unserved at the end of a period of active duty or the end of any normal period of inactive duty training may be carried over to subsequent periods of inactive-duty training or active duty.

"(c) *Applicability.* This subsection is not applicable when a member is held on active duty pursuant to R.C.M. 202(c).

"(d) *Changes in type of service.* A member of a reserve component at the time disciplinary action is initiated, who is alleged to have committed an offense while on active duty or inactive-duty training, is subject to court-martial jurisdiction without regard to any change between active and reserve service or within different categories of reserve service subsequent to commission of the offense. This subsection does not apply to a person whose military status was completely terminated after commission of an offense."

c. R.C.M. 503(a)(2) is amended by inserting in the first sentence "orally on the record or" after "request".

d. R.C.M. 701(b)(2) is amended by striking out "a mental disease, defect, or other condition bearing upon the guilt of the accused" and inserting in lieu thereof "the defense of lack of mental responsibility".

e. R.C.M. 706(c)(1) is amended to read as follows:

"(1) *By whom conducted.* When a mental examination is ordered under subsection (b) of this rule, the matter shall be referred to a board consisting of one or more persons. Each member of the board shall be either a physician or a clinical psychologist. Normally, at least one member of the board shall be either a psychiatrist or a clinical psychologist. The board shall report as to the mental capacity, mental responsibility, or both of the accused."

f. R.C.M. 706(c)(2) is amended as follows:

(1) Subsection (A) is amended to read as follows:

"(A) At the time of the alleged criminal conduct, did the accused have a severe mental disease or defect? (The term "severe mental disease or defect" does not include an abnormality manifested only by repeated criminal or

otherwise antisocial conduct, or minor disorders such as nonpsychotic behavior disorders and personality defects.)";

(2) Subsection (C) is amended to read as follows:

"(C) Was the accused, at the time of the alleged criminal conduct and as a result of such severe mental disease or defect, unable to appreciate the nature and quality or wrongfulness of his or her conduct?"; and

(3) Subsection (D) is deleted and subsection (E) is redesignated as subsection (D).

g. R.C.M. 707 is amended—

(1) in subsection (a)—

(a) by striking "or" in subsection (1);

(b) by striking the period at the end of subsection (2) and inserting in lieu thereof "; or"; and

(c) by inserting the following new paragraph at the end thereof:

"(3) Entry on active duty under R.C.M. 204."; and

(2) in subsection (c) by redesignating paragraph (8) as paragraph (9) and by inserting the following new paragraph after paragraph (7):

"(8) Any period of delay, not exceeding 60 days, occasioned in processing and implementing a request pursuant to R.C.M. 204 to order a member of a reserve component to active duty for disciplinary action."

h. R.C.M. 903 is amended—

(1) in subsection (b)(1) by inserting "or shall be made orally on the record" after "signed by the accused";

(2) in subsection (c)(1)—

(a) by striking out "receipt" and inserting in lieu thereof "notice";

(b) by striking out "timely written request" and inserting in lieu thereof "timely request"; and

(c) by inserting a comma after "enlisted accused"; and

(3) in subsection (c)(3) by striking out "written".

i. R.C.M. 916 is amended as follows:

(1) Subsection (b) is amended by striking out "Once" and inserting in lieu thereof "Except for the defense of lack of mental responsibility, once" and by inserting the following new sentence at the end thereof: "The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.";

(2) Subsection (e)(1) is amended to read as follows:

"(1) *Homicide or assault cases involving deadly force.* It is a defense to a homicide, assault involving deadly force, or battery involving deadly force that the accused:

"(A) Apprehended, on reasonable grounds, that death or grievous bodily harm was about to be inflicted wrongfully on the accused; and

"(B) Believed that the force the accused used was necessary for protection against death or grievous bodily harm.";

(3) Subsection (k)(1) is amended to read as follows:

"(1) *Lack of mental responsibility.* It is an affirmative defense to any offense that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his or her acts. Mental disease or defect does not otherwise constitute a defense.";

(4) Subsection (k)(2) is amended to read as follows:

"(2) *Partial mental responsibility.* A mental condition not amounting to a lack of mental responsibility under subsection (k)(1) of this rule is not a defense, nor is evidence of such a mental condition admissible as to whether the accused entertained a state of mind necessary to be proven as an element of the offense."; and

(5) Subsection (k)(3)(A) is amended by striking out "some evidence to the contrary is admitted" and inserting in lieu thereof "the accused establishes, by clear and convincing evidence, that he or she was not mentally responsible at the time of the alleged offense".

j. R.C.M. 918(a) is amended—

(1) in subsection (1) by inserting "not guilty only by reason of lack of mental responsibility;" after "guilty of any substitutions;"; and

(2) in subsection (2) by inserting "not guilty only by reason of lack of mental responsibility;" after "Article____;".

k. R.C.M. 920(e)(5)(D) is amended by inserting the following at the end thereof: "[When the issue of lack of mental responsibility is raised, add:] However, the burden of proving the defense of lack of mental responsibility by clear and convincing evidence is upon the accused."

l. R.C.M. 921(c) is amended—

(1) by redesignating subsections (4) and (5) as (5) and (6) respectively; and

(2) by inserting the following new subsection after subsection (3):

"(4) *Not guilty only by reason of lack of mental responsibility.* When the defense of lack of mental responsibility is in issue under R.C.M. 916(k)(1), the members shall first vote on whether the prosecution has proven the elements of the offense beyond a reasonable doubt. If at least two-thirds of the members present (all members for offenses where the death penalty is mandatory) vote for a finding of guilty, then the members shall vote on whether the accused has proven lack of mental responsibility. If a majority of the members present concur that the accused has proven lack of mental responsibility by clear and convincing evidence, a finding of not guilty only by reason of lack of mental responsibility results. If the vote on lack of mental responsibility does not result in a finding of not guilty only by reason of lack of mental responsibility, then the defense of lack of mental responsibility has been rejected and the finding of guilty stands."

m. R.C.M. 924(b) is amended by inserting the following new sentence before the last sentence thereof: "Any finding of not guilty only by reason of lack of mental responsibility shall be reconsidered on the issue of the finding of guilty of the elements if more than one-third of the members vote for reconsideration, and on the issue of mental responsibility if a majority vote for reconsideration."

n. R.C.M. 1001(b)(2) is amended by striking out "all those records" in the second paragraph and inserting in lieu thereof "any records".

o. R.C.M. 1003(c) is amended—

(1) by redesignating subsection (3) as subsection (4); and

(2) by inserting the following new subsection after subsection (2):

"(3) *Based on reserve status in certain circumstances.*

"(A) *Restriction on liberty.* A member of a reserve component whose order to active duty is approved pursuant to Article 2(d)(5) may be required to serve any adjudged restriction on liberty during that period of active duty. Other members of a reserve component ordered to active duty pursuant to Article 2(d)(1) or tried by summary court-martial while on inactive duty training may not—

"(i) be sentenced to confinement; or

"(ii) be required to serve a court-martial punishment consisting of any other restriction on liberty except during subsequent periods of inactive-duty training or active duty.

"(B) *Forfeiture.* A sentence to forfeiture of pay of a member not retained on active duty after completion of disciplinary proceedings may be collected from active duty and inactive-duty training pay during subsequent periods of duty."

p. R.C.M. 1010(c) is amended to read as follows:

"(c) The right to apply for relief from the Judge Advocate General if the case is neither reviewed by a Court of Military Review nor reviewed by the Judge Advocate General under R.C.M. 1201(b)(1); and"

q. R.C.M. 1105(c) is amended by—

(1) amending subsection (1) to read as follows:

"(1) *General and special courts-martial.* After a general or special court-martial, the accused may submit matters under this rule within the later of 10 days after a copy of the authenticated record of trial or, if applicable, the recommendation of the staff judge advocate or legal officer is served on the accused. If the accused shows that additional time is required for the accused to submit such matters, the convening authority may, for good cause, extend the 10-day period for not more than 20 additional days."

(2) striking out subsection (2);

(3) redesignating subsections (3), (4) and (5) as subsections (2), (3) and (4) respectively; and

(4) amending the last sentence of redesignated subsection (2) to read as follows: "If the accused shows that additional time is required for the accused to submit such comments, the convening authority may, for good cause, extend the period in which comments may be submitted for up to 20 additional days."

r. R.C.M. 1106(f)(5) is amended by striking out "5 days from receipt" and inserting in lieu thereof "10 days from service of the record of trial under R.C.M. 1104(b) or receipt of the recommendation, whichever is later,".

s. R.C.M. 1107(b)(5) is amended to read as follows:

"(5) *Action when accused lacks mental capacity.* The convening authority may not approve a sentence while the accused lacks mental capacity to understand and to conduct or cooperate intelligently in the post-trial proceedings. In the absence of substantial evidence to the contrary, the accused is presumed to have the capacity to understand and to conduct or cooperate intelligently in the post-trial proceedings. If a substantial question is raised as to the requisite mental capacity of the accused, the convening authority may direct an examination of the accused in accordance with R.C.M. 706 before deciding whether the accused lacks mental capacity, but the examination may be limited to determining the accused's present capacity to understand and cooperate in the post-trial proceedings. The convening authority may approve the sentence unless it is established, by a preponderance of the evidence—including matters outside the record of trial—that the accused does not have the requisite mental capacity. Nothing in this subsection shall prohibit the convening authority from disapproving the findings of guilty and sentence."

t. R.C.M. 1109 is amended—

(1) in subsection (c)(3) by striking out "probation" and inserting in lieu thereof "suspension";

(2) in subsection (c)(4)(A) by inserting "in writing" after "notified";

(3) in subsection (d)(1)(A) by striking out "probation" and inserting in lieu thereof "suspension";

- (4) in subsection (d)(1)(B) by inserting "in writing" after "notified";
- (5) in subsection (d)(1)(B)(iii) by striking out "probation" and inserting in lieu thereof "suspension";
- (6) in subsection (d)(1)(D) by inserting "written" before "recommendation concerning vacation";
- (7) in subsection (e)(4) by inserting "written" before "recommendation concerning vacation"; and
- (8) in subsection (e)(5) by striking out "probation" and inserting in lieu thereof "suspension".

u. R.C.M. 1112 is amended—

- (1) in subsection (d) by adding the following new paragraph at the end thereof:

"Copies of the judge advocate's review under this rule shall be attached to the original and all copies of the record of trial. A copy of the review shall be forwarded to the accused."; and

- (2) in subsection (e) by striking out the last sentence.

v. R.C.M. 1113(d)(1) is amended to read as follows:

"(1) *Death.*

"(A) *Manner carried out.* A sentence to death which has been finally ordered executed shall be carried out in the manner prescribed by the Secretary concerned.

"(B) *Action when accused lacks mental capacity.* An accused lacking the mental capacity to understand the punishment to be suffered or the reason for imposition of the death sentence may not be put to death during any period when such incapacity exists. The accused is presumed to have such mental capacity. If a substantial question is raised as to whether the accused lacks capacity, the convening authority then exercising general court-martial jurisdiction over the accused shall order a hearing on the question. A military judge, counsel for the government, and counsel for the accused shall be detailed. The convening authority shall direct an examination of the accused in accordance with R.C.M. 706, but the examination may be limited to determining whether the accused understands the punishment to be suffered and the reason therefor. The military judge shall consider all evidence presented, including evidence provided by the accused. The accused has the burden of proving such lack of capacity by a preponderance of the evidence. The military judge shall make findings of fact, which will then be forwarded to the convening authority ordering the hearing. If the accused is found to lack capacity, the convening authority shall stay the execution until the accused regains appropriate capacity."

w. R.C.M. 1114 is amended as follows:

- (1) Subsection (b)(2) is amended by inserting the following at the end of the introductory paragraph thereof: "The subsequent action and the supplementary order may be the same document if signed personally by the appropriate convening or higher authority."; and

- (2) Subsection (c) is amended to read as follows:

"(c) *Contents.*

"(1) *In general.* The order promulgating the initial action shall set forth: the type of court-martial and the command by which it was convened; the charges and specifications, or a summary thereof, on which the accused was arraigned; the accused's pleas; the findings or other disposition of each charge and specification; the sentence, if any; and the action of the convening authority, or a summary thereof. Supplementary orders shall recite, verbatim, the action or order of the appropriate authority, or a summary thereof.

"(2) *Dates.* The date of a promulgating order shall be the date of the action of the convening authority being promulgated, if any. An order promulgating an acquittal, a finding of not guilty only by reason of lack of mental responsibility, or a court-martial terminated before findings shall bear the date of its publication. A promulgating order shall state the date the sentence was adjudged, the date on which the acquittal or finding of not guilty only by reason of lack of mental responsibility was announced, or the date on which the proceedings were otherwise terminated."

x. R.C.M. 1201(b)(3)(A) is amended by striking out the comma after "a Court of Military Review" and inserting in lieu thereof "or by the Judge Advocate General under subsection (b)(1) of this rule."

y. R.C.M. 1203(c) is amended by adding the following new subsection at the end thereof:

"(5) *Action when accused lacks mental capacity.* An appellate authority may not affirm the proceedings while the accused lacks mental capacity to understand and to conduct or cooperate intelligently in the appellate proceedings. In the absence of substantial evidence to the contrary, the accused is presumed to have the capacity to understand and to conduct or cooperate intelligently in the appellate proceedings. If a substantial question is raised as to the requisite mental capacity of the accused, the appellate authority may direct that the record be forwarded to an appropriate authority for an examination of the accused in accordance with R.C.M. 706, but the examination may be limited to determining the accused's present capacity to understand and cooperate in the appellate proceedings. The order of the appellate authority will instruct the appropriate authority as to permissible actions that may be taken to dispose of the matter. If the record is thereafter returned to the appellate authority, the appellate authority may affirm part or all of the findings or sentence unless it is established, by a preponderance of the evidence—including matters outside the record of trial—that the accused does not have the requisite mental capacity. If the accused does not have the requisite mental capacity, the appellate authority shall stay the proceedings until the accused regains appropriate capacity, or take other appropriate action. Nothing in this subsection shall prohibit the appellate authority from making a determination in favor of the accused which will result in the setting aside of a conviction."

z. R.C.M. 1305(b)(2) is amended by striking out "number of previous convictions considered and the".

Sec. 2. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. Mil. R. Evid. 304(h) is amended by inserting the following new paragraph at the end thereof:

"(4) *Refusal to obey order to submit body substance.* If an accused refuses a lawful order to submit for chemical analysis a sample of his or her blood, breath, urine or other body substance, evidence of such refusal may be admitted into evidence on:

"(A) A charge of violating an order to submit such a sample; or

"(B) Any other charge on which the results of the chemical analysis would have been admissible."

b. Mil. R. Evid. 613(a) is amended by inserting "to him at that time, but on request the same shall be shown or disclosed" after "disclosed".

c. Mil. R. Evid. 902(1) is amended by striking out "exception" and inserting in lieu thereof "execution".

Sec. 3. Part IV of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. Paragraph 4 is amended in subparagraph c(5) by—

(1) adding "(e) Article 106a—espionage" after subparagraph c(5)(d); and

(2) redesignating subparagraph c(5)(e) as subparagraph c(5)(f).

b. Paragraph 10 is amended in subparagraph c(9) by adding "and return" after "the hours of departure".

c. Paragraph 32 is amended—

(1) in subparagraph c(1) by striking out "military departments" and inserting in lieu thereof "armed forces"; and

(2) by amending subparagraphs d(1) through d(4) to read as follows:

"(1) *Sale or disposition of military property.*

"(a) Article 80—attempts

"(b) Article 134—sale or disposition of non-military government property

"(2) *Willfully damaging military property.*

"(a) Article 108—damaging military property through neglect

"(b) Article 109—willfully damaging non-military property

"(c) Article 80—attempts

"(3) *Willfully suffering military property to be damaged.*

"(a) Article 108—through neglect suffering military property to be damaged

"(b) Article 80—attempts

"(4) *Willfully destroying military property.*

"(a) Article 108—through neglect destroying military property

"(b) Article 109—willfully destroying non-military property

"(c) Article 108—willfully damaging military property

"(d) Article 109—willfully damaging non-military property

"(e) Article 108—through neglect damaging military property

"(f) Article 80—attempts".

d. Paragraph 35 is amended—

(1) in subparagraph a by striking out "manner," and inserting in lieu thereof "manner, or while impaired by a substance described in section 912a(b) of this title (article 112a(b))";

(2) in subparagraph b(2) by striking out "; or" and inserting in lieu thereof a comma and by striking out "manner." and inserting in lieu thereof "manner, or that the accused was impaired by a substance described in article 112a(b) while operating the vehicle.";

(3) in subparagraph c by amending subparagraph (3) to read as follows:

"(3) *Drunk or impaired.* "Drunk" and "impaired" mean any intoxication which is sufficient sensibly to impair the rational and full exercise of the mental or physical faculties. Whether the drunkenness or impairment was caused by liquor or drugs is immaterial."; and

(4) in subparagraph f by inserting "[while impaired by ____]" after "[while drunk]".

e. Paragraph 42 is amended in subparagraph d by—

(1) deleting subparagraph d(1); and

(2) striking out "(2)".

f. Paragraph 46 is amended—

(1) in subparagraph b(1) by adding the following at the end thereof:

"[Note: If the property is alleged to be military property, as defined in paragraph 32c(1), add the following element]

"(e) That the property was military property.";

(2) by amending subparagraph d to read as follows:

"d. *Lesser included offenses.*

"(1) *Larceny.*

"(a) Article 121—wrongful appropriation

"(b) Article 80—attempts

"(2) *Larceny of military property.*

"(a) Article 121—wrongful appropriation

"(b) Article 121—larceny of property other than military property

"(c) Article 80—attempts

"(3) *Wrongful appropriation. Article 80—attempts*";

(3) by amending subparagraph e to read as follows:

"e. *Maximum Punishment.*

"(1) *Larceny.*

"(a) *Military property of a value of \$100 or less.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

"(b) *Property other than military property of a value of \$100 or less.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

"(c) *Military property of a value of more than \$100 or of any military motor vehicle, aircraft, vessel, firearm, or explosive.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

"(d) *Property other than military property of a value of more than \$100 or any motor vehicle, aircraft, vessel, firearm, or explosive not included in subparagraph e(1)(c).* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for five years."; and

(4) in subparagraph f(1) by adding "(military property)" after "steal _____";

g. Paragraph 89 is amended in subparagraph d to read as follows:

"d. *Lesser included offenses*

"(1) Article 117—provoking speeches

"(2) Article 80—attempts".

Sec. 4. Part V of the Manual for Courts-Martial, United States, 1984, is amended in paragraph 5 by—

a. Redesignating subparagraph "e" as subparagraph "g"; and

b. Inserting the following new subparagraphs after subparagraph d:

"e. *Punishments imposed on reserve component personnel while on inactive-duty training.* When a punishment under Article 15 amounting to a deprivation of liberty (for example, restriction, correctional custody, extra duties, or arrest in quarters) is imposed on a member of a reserve component during a period of inactive-duty training, the punishment may be served during one or both of the following:

"(1) a normal period of inactive-duty training; or

"(2) a subsequent period of active duty (not including a period of active duty under Article 2(d)(1), unless such active duty was approved by the Secretary concerned).

"Unserved punishments may be carried over to subsequent periods of inactive-duty training or active duty. A sentence to forfeiture of pay may be collected from active duty and inactive-duty training pay during subsequent periods of duty.

"f. *Punishments imposed on reserve component personnel when ordered to active duty for disciplinary purposes.* When a punishment under Article 15 is imposed on a member of a reserve component during a period of active duty to which the reservist was ordered pursuant to R.C.M. 204 and which constitutes a deprivation of liberty (for example, restriction, correctional custody, extra duties, or arrest in quarters), the punishment may be served during any or all of the following:

"(1) that period of active duty to which the reservist was ordered pursuant to Article 2(d), but only where the order to active duty was approved by the Secretary concerned;

"(2) a subsequent normal period of inactive-duty training; or

"(3) a subsequent period of active duty (not including a period of active duty pursuant to R.C.M. 204 which was not approved by the Secretary concerned).

"Unserved punishments may be carried over to subsequent periods of inactive-duty training or active duty. A sentence to forfeiture of pay may be collected from active duty and inactive-duty training pay during subsequent periods of duty."

Sec. 5. These amendments shall take effect on March 12, 1987, subject to the following:

a. The addition of Rule for Courts-Martial 204, the amendments made to Rules for Courts-Martial 707 and 1003(c), and the amendments made to paragraph 5 of Part V, shall apply to any offense committed on or after March 12, 1987.

b. The amendments made to Rules for Courts-Martial 701(b), 706(c)(2), 916(b), 916(k), 920, 921, and 922 shall apply to any offense committed on or after November 14, 1986.

c. The amendments made to Rules for Courts-Martial 503 and 903 shall apply only in cases in which arraignment has been completed on or after March 12, 1987.

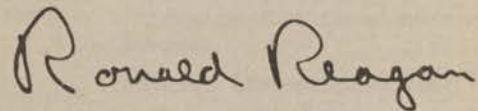
d. The amendments made to Rules for Courts-Martial 1105 and 1106 shall apply only in cases in which the sentence is adjudged on or after March 12, 1987.

e. Except as provided in section 5.b, nothing contained in these amendments shall be construed to make punishable any act done or omitted prior to March 12, 1987, which was not punishable when done or omitted.

f. The maximum punishment for an offense committed prior to March 12, 1987 shall not exceed the applicable maximum in effect at the time of the commission of such offense.

g. Nothing in these amendments shall be construed to invalidate any nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to March 12, 1987, and any such restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

Sec. 6. The Secretary of Defense, on behalf of the President, shall transmit a copy of this Order to the Congress of the United States in accord with Section 836 of title 10 of the United States Code.



THE WHITE HOUSE,
March 3, 1987.

[FR Doc. 87-4910

Filed 3-4-87; 4:28 pm]

Billing code 3195-01-M

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Rules and Regulations

Federal Register

Vol. 52, No. 45

Monday, March 9, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 551]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 551 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 325,000 cartons during the period March 8-14, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 551 (§ 910.851) is effective for the period March 8-14, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1986-87. The committee met publicly on March 3, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that demand is good for sizes 165's and larger, and is improving on smaller-sized fruit.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the *Federal Register* (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.851 is added to read as follows:

§ 910.851 Lemon Regulation 551.

The quantity of lemons grown in California and Arizona which may be handled during the period March 8 through March 14, 1987, is established at 325,000 cartons.

Dated: March 4, 1987.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87-4898 Filed 3-6-87; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 911 and 915

[Docket Nos. AO-267-A10 and AO-254-A9]

Limes Grown in Florida, Avocados Grown in South Florida; Order Amending Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule further amends the Federal marketing agreements and marketing orders for limes grown in Florida and avocados grown in South Florida. The amendment provisions: (1) Broaden handler representation on the Florida Lime Administrative Committee and the Avocado Administrative Committee by limiting each handler organization to one handler member and alternate from each of the two districts within the respective production area; (2) provide that the Secretary conduct a referendum every six years under each order starting in 1990 to ascertain if producers favor continuation of the lime and avocado marketing orders; and (3) add authority in the lime order to require that handlers mark undersized limes with an approved food dye to prevent such fruit from entering regulated marketing channels. The amendment provisions should improve the marketing order programs. The

amendment provisions were approved by the Florida lime and avocado growers in mail referenda conducted September 22–October 3, 1986.

EFFECTIVE DATE: March 9, 1987.

FOR FURTHER INFORMATION CONTACT:

Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5697.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued December 24, 1984, and published in the *Federal Register* (49 FR 50731, December 31, 1984). Notice of Recommended Decision issued September 12, 1985, and Published in the *Federal Register* (50 FR 37669, September 17, 1985). Secretary's Decision issued September 2, 1986, and published in the *Federal Register* (51 FR 32098, September 9, 1986).

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291 and Departmental Regulation 1512-1.

Preliminary Statement: This final rule was formulated on the record of a public hearing held at Homestead, Florida, on January 15, 1985, to consider proposed further amendment of the marketing agreements, as amended, and Order Nos. 911 and 915, as amended (7 CFR Parts 911 and 915). The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900). Notice of this hearing was issued December 24, 1984, containing several amendment proposals submitted by the Florida Lime Administrative Committee and the Avocado Administrative Committee established under the orders. The Department proposed that it be authorized to make any necessary conforming changes.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, on September 12, 1985, filed with the Hearing Clerk, U.S. Department of Agriculture, the Recommended Decision containing the notice of the opportunity to file written exceptions thereto. No exceptions were filed.

The Secretary's Decision was issued September 2, 1986, directing that a referendum be conducted for each marketing order during the period September 22–October 3, 1986, among lime producers in Florida, and avocado

producers in South Florida to determine whether they favored various amendment proposals to the orders. In that referendum, the Florida lime producers and Florida avocado producers voted in favor of all amendment proposals listed on the referendum ballots.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of the businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601-674), and rules promulgated thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Previous determinations concerning the RFA made in the Recommended Decision and the Secretary's Decision issued in this proceeding are applicable to this action.

Order Amending the Order as Amended, Regulating the Handling of Limes Grown in Florida

Findings and determinations. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and each previously issued amendment thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) **Findings upon the basis of the hearing record.** Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon proposed amendment of the marketing agreement, as amended, and Marketing Order No. 911, as amended, (7 CFR Part 911), regulating the handling of limes grown in Florida.

Upon the basis of the record it is found that:

(1) The order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as amended, and as hereby further amended, regulates the handling of limes grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial or industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(3) The order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carryout the declared policy of the Act.

(4) There are no differences in the production and marketing of limes grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of limes grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) **Additional findings.** It is necessary and in the public interest to make this order amending the order, as amended, effective not later than the date of publication in the *Federal Register*. Any delay beyond that date would tend to interfere with effective functioning and administration of the order. The amendatory order provides for improvements in the operation and functioning of the order, which need to be utilized as soon as possible. The specified effective date is necessary to meet these objectives.

More specifically, this amendatory order changes handler membership on the Florida Lime Administrative Committee by limiting each handler organization to one handler member and alternate from each of the two districts of the production area. This change must become effective as soon as possible to enable the committee to conduct handler nominations based on this change for the 1987–88 term of office, which begins April 1, 1987. Also, this amendatory order authorizes the issuance of regulations for marking undersized limes to help keep such limes out of the marketplace. Such limes demoralize the market for larger limes and adversely affect grower returns. Because 1986–87 season lime shipments are underway,

authority for establishing lime marking requirements should be effective as soon as possible to permit appropriate regulations to be issued.

In view of the foregoing, it is hereby found and determined that good cause exists for making this order effective upon publication in the *Federal Register*, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the *Federal Register* (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551-559);

(c) *Determinations*. It is hereby determined that:

(1) The "Marketing Agreement, as Amended, Regulating the Handling of Limes Grown in Florida" upon which the aforesaid public hearing was held has been signed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping covered by the said order, as amended, and as hereby further amended) who, during the period April 1, 1985, through March 31, 1986, handled not less than 50 percent of the volume of such limes covered by the said order, as amended, and as hereby further amended; and

(2) The issuance of this amendatory order, amending the aforesaid order, as amended, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who during the period April 1, 1985, through March 31, 1986 (which has been deemed to be a representative period), have been engaged within Florida, in the production of limes for market, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

Order Relative to Handling

It is therefore ordered, That, on and after the effective date hereof, the handling of limes grown in Florida shall be in conformity to, and in compliance with, the following terms and conditions of the said order, as amended, and as hereby further amended as follows:

List of Subjects

7 CFR Part 911

Marketing agreement and order, Limes, Florida.

7 CFR Part 915

Marketing agreement and order, Avocados, Florida.

PART 911—LIMES GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 911 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 911.20 is amended by adding one sentence at the end of paragraph (a) to read as follows:

§ 911.20 Establishment and membership.

(a) * * * No handler or handler organization shall be permitted to have more than one handler member and alternate on the committee from each district: *Provided*, That this requirement may be waived by the Secretary in the event that there are not enough persons available to be nominated and selected to serve on the committee.

* * * * *

3. Section 911.22 is amended by revising paragraph (b)(3) to read as follows:

§ 911.22 Nomination.

* * * * *

(b) * * *

(3) Only handlers may participate in the nomination and election of nominees for handler members and their alternates. Each handler is entitled to cast only one vote for each nominee to be elected in the district in which such handler handles limes. Each vote shall be weighted by the volume of limes shipped by such handler during the immediately preceding twelve-month period, January through December.

4. Section 911.48 is amended by adding a proviso at the end of paragraph (a)(1) to read as follows:

§ 911.48 Issuance of regulations.

(a) * * *

(1) * * * *Provided*, That such regulations may require that limes not meeting minimum size requirements established under this section be marked with a Food and Drug Administration approved food dye as a necessary and incidental safeguard to prevent such limes from entering fresh marketing channels for regulated limes.

* * * * *

5. Section 911.64 is amended by revising paragraph (c), redesignating current paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as set forth below. Newly designated paragraph (e) is republished.

§ 911.64 Termination.

* * * * *

(c) The Secretary shall terminate the provisions of this part whenever the Secretary finds by referendum or otherwise that such termination is favored by a majority of the producers: *Provided*, That such majority has, during a representative period determined by the Secretary, produced more than 50

percent of the volume of the limes produced within the production area: *And provided further*, That such termination shall be announced by March 15 of the then current fiscal year.

(d) The Secretary shall conduct a referendum as soon as practicable after the end of the fiscal year ending March 31, 1990, and at such time every sixth year thereafter, to ascertain whether continuance of this part is favored by lime producers. The Secretary may terminate the provisions of this part at the end of any fiscal year in which the Secretary has found that continuance of this part is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of limes in the production area: *Provided*, That termination of this part shall be effective only if announced on or before March 15 of the then current fiscal year.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

Order Amending the Order as Amended, Regulating the Handling of Avocados Grown in South Florida.

Findings and determinations. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and each previously issued amendment thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record*. Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon proposed amendment of the marketing agreement, as amended, and Marketing Order No. 915, as amended, (7 CFR Part 915), regulating the handling of avocados grown in South Florida.

Upon the basis of the record it is found that:

(1) The order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as amended, and as hereby further amended, regulates the

handling of avocados grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial or industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(3) The order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The order, as amended, and as hereby further amended, prescribes, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to differences in the production and marketing of avocados grown in the production area; and

(5) All handling of avocados grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is necessary and in the public interest to make this order amending the order, as amended, effective not later than the date of publication in the *Federal Register*. Any delay beyond that date would tend to interfere with effective functioning and administration of the order. The amendatory order provides for improvements in the operation and functioning of the order, which need to be utilized as soon as possible. The specified effective date is necessary to meet these objectives.

More specifically, this amendatory order changes handler membership on the Avocado Administrative Committee by limiting each handler organization to one handler member and alternate from each of the two districts of the production area. This change must become effective as soon as possible to enable the committee to conduct handler nominations based on this change for the 1987-88 term of office, which begins April 1, 1987.

In view of the foregoing, it is hereby found and determined that good cause exists for making this order effective upon publication in the *Federal Register*, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the *Federal Register* (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551-559);

(c) *Determinations.* It is hereby determined that:

(1) The "Marketing Agreement, as Amended, Regulating the Handling of Avocados Grown in South Florida" upon which the aforesaid public hearing was held has been signed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping covered by the said order, as amended, and as hereby further amended) who, during the period April 1, 1985, through March 31, 1986, handled not less than 50 percent of the volume of such avocados covered by the said order, as amended, and as hereby further amended; and

(2) The issuance of this amendatory order, amending the aforesaid order, as amended, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who during the period April 1, 1985, through March 31, 1986 (which has been deemed to be a representative period), have been engaged within South Florida, in the production of avocados for market, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

Order Relative to Handling

It is therefore ordered, That, on and after the effective date hereof, all handling of avocados grown in South Florida shall be in conformity to, and in compliance with, the terms and conditions of the said order, as amended, and as hereby further amended as follows:

List of Subjects in 7 CFR Part 915 Marketing Agreement and Order, Avocados, Florida

6. The authority citation for 7 CFR Part 915 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

7. Section 915.20 is amended by adding one sentence at the end of paragraph (a) to read as follows:

§ 915.20 Establishment and membership.

(a) * * * No handler or handler organization shall be permitted to have more than one handler member and alternate on the committee from each district: *Provided*, That this requirement may be waived by the Secretary in the event that there are not enough persons available to be nominated and selected to serve on the committee.

* * * * *

8. Section 915.22 is amended by revising paragraph (b)(3) to read as follows:

§ 915.22 Nomination.

* * * * *

(b) * * *

(3) Only handlers may participate in the nomination and election of nominees for handler members and their alternates. Each handler shall be entitled to cast only one vote for each nominee to be elected in the district in which such handler handles avocados. Each vote shall be weighted by the volume of avocados shipped by such handler during the immediately preceding twelve-month period, January through December.

9. Section 915.64 is amended by revising paragraph (c), redesignating current paragraph (d) as paragraph (e), and adding a new paragraph (d), to read as set forth below. (The text of newly designated paragraph (e) is republished.)

§ 915.64 Termination.

* * * * *

(c) The Secretary shall terminate the provisions of this part whenever the Secretary finds by referendum or otherwise that such termination is favored by a majority of the producers: *Provided*, That such majority has, during a representative period determined by the Secretary, produced more than 50 percent of the volume of the avocados produced within the production area: *And Provided further*, That such termination shall be announced by March 15 of the then current fiscal year.

(d) The Secretary shall conduct a referendum as soon as practicable after the end of the fiscal year ending March 31, 1990, and at such time every sixth year thereafter, to ascertain whether continuance of this part is favored by avocado producers. The Secretary may terminate the provisions of this part at the end of any fiscal year in which the Secretary has found that continuance of this part is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of avocados in the production area: *Provided*, That termination of this part shall be effective only if announced on or before March 15 of the then current fiscal year.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

Effective date: March 9, 1987.

Signed at Washington, DC, on: March 3, 1987.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Service.

[FR Doc. 87-4766 Filed 3-8-87; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 947

Potatoes Grown in Designated Areas in California and Oregon; Revision of Handling Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule temporarily relaxes the current minimum size requirements for high quality white fleshed varieties of potatoes handled for market expansion purposes and permanently exempts all non-white fleshed varieties of potatoes from handling regulations under the marketing order. Such action is designed to develop and expand the market for potatoes.

EFFECTIVE DATE: February 25, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone 202-447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601-674), and rules promulgated thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 42 handlers of potatoes under the marketing order for potatoes grown in the production area in Oregon and Northern California. In addition, there are approximately 469

potato producers in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than \$100,000, and agricultural services firms are defined as those whose gross annual receipts are less than \$3,500,000. The great majority of these handlers and producers may be classified as small entities. This action relieves restrictions on handlers and, thus will not impose any additional costs on handlers.

Pursuant to the requirements set forth in the RFA, the Administrator of the Agricultural Marketing Service has considered the economic impact on small entities. This final rule temporarily relaxes minimum size requirements for high quality white fleshed varieties of potatoes shipped for market expansion purposes under certain conditions, and permanently exempts non-white fleshed varieties of potatoes from handling regulations effective under the marketing order. This action is expected to directly affect a relatively small number of Oregon-California potato producers and handlers. The committee reports that only one handler so far has expressed an interest in shipping high quality white fleshed potatoes for market expansion purposes under a special purpose certificate and that the acreage of non-white fleshed varieties of potatoes grown in the production area is extremely small. This action would not involve any known costs to growers and handlers. After a period of time the committee will evaluate the effect of this action on the market.

This final rule is issued under the marketing agreement and Order No. 947 (7 CFR Part 947), regulating the handling of Irish potatoes grown in Modoc and Siskiyou Counties, California, and in all Counties in Oregon, except Malheur County. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The authority for the rule is specified in §§ 947.52, 947.54, 947.55, and 947.80.

This final rule temporarily relaxes the minimum size requirements for certain varieties of potatoes shipped under specific conditions for market expansion purposes. Current minimum size requirements along with other handling requirements are specified in § 947.340 (46 FR 47757, September 30, 1981; 48 FR 38203, August 23, 1983) for fresh Oregon-California potatoes. The current minimum size requirements are 2 inches in diameter or 4 ounces in weight for shipments within the continental United States, and 1½ inches in diameter for potatoes shipped outside such area,

while the minimum grade requirement is U.S. No. 1 for potatoes packed in 50-pound cartons and U.S. No. 2 for potatoes packed in other size containers. Potatoes shipped under the relaxed minimum size requirements will be required to grade at least U.S. No. 1, and be packed in quantities of 50 pounds or more per container. In addition, all red-skinned varieties of such potatoes will be required to be "Size B," while all other varieties will need to be smaller than 1½ inches in diameter. Prior to shipping any potatoes under the relaxed size requirements, handlers must apply for and obtain from the committee each marketing season a special purpose certificate authorizing shipment of the potatoes. In addition, handlers shipping under the provisions specified in this amendment will be required to promptly report information requested by the committee relating to such shipments, including the grade and usage of the potatoes, once the shipments are concluded. Such requirements are designed to provide adequate safeguards to assure that potatoes shipped under these provisions are shipped to the intended market for the stated purpose, and to provide the committee with information necessary to monitor and evaluate the effects of such shipments on the market. This action is designed to develop new markets and expand marketing opportunities for potato growers in Oregon and Northern California.

The final rule also permanently exempts all non-white fleshed varieties of potatoes from all handling regulations currently effective under the marketing order in § 947.340, including minimum grade and size, cleanliness, maturity, pack, and inspection requirements. Non-white fleshed varieties are currently produced in very small quantities, and the market for these potatoes is quite limited and different from the market for white fleshed varieties. This action is intended to facilitate sales of such potatoes by exempting them from handling regulations primarily designed for white fleshed varieties of potatoes.

The final rule also adds two new definitions ("Size B" and "non-white fleshed varieties of potatoes") to the handling regulations.

After consideration of the information and recommendation submitted by the committee, and other available information, it is found that amending § 947.340 will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is hereby found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and to

engage in public rulemaking procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because: (1) This action relaxes restrictions on the handling of certain potatoes shipped to the fresh market, and should become effective as soon as possible; (2) potato handlers are aware of this action which was recommended by the Oregon-California Potato Committee at a public meeting, and such handlers will not need additional time to comply with the rule; (3) shipment of the 1986/87 season potato crop is currently underway; and (4) no useful purpose would be served by delaying the effective date of this action.

List of Subjects in 7 CFR Part 947

Marketing agreements and orders, Potatoes, Oregon, California.

PART 947—[AMENDED]

1. The authority citation for 7 CFR Part 947 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 947.340 (46 FR 47757, September 30, 1981; 48 FR 38203, August 23, 1983) is amended by revising the introductory text and paragraphs (a), (b), and (j)(1); by redesignating paragraph (j)(5) as (j)(6); and by adding a new paragraph (j)(5) to read as follows:

§ 947.340 Handling regulation.

No person shall handle any variety of potatoes grown in the production area, except for non-white fleshed varieties of potatoes, unless such potatoes meet the requirements specified in paragraphs (a) through (f) of this section, or unless such potatoes are handled in accordance with paragraphs (g) and (h), or (i) of this section.

(a) *Grade requirements.* Such potatoes grade at least U.S. No. 2.

(b) *Size requirements.* Such potatoes shipped to points within the continental United States shall be at least 2 inches in diameter or weigh at least 4 ounces, and such potatoes shipped to export destinations shall be at least 1½ inches in diameter. *Provided*, That until March 7, 1988, any person may handle all varieties of such potatoes, except red-skinned varieties of potatoes, that measure less than 1½ inches in diameter, and all red-skinned varieties of potatoes which are Size B, if such potatoes otherwise grade at least U.S. No. 1, and they are packed in quantities of 50 pounds or more per container: *Provided further*, That any person who

desires to so handle potatoes shall each season prior to shipment apply for and obtain a special purpose certificate from the committee authorizing shipment of the potatoes for market expansion purposes: *Provided further*, That any person who so handles potatoes for market expansion purposes shall promptly report the shipment, grading, and usage of the potatoes to the committee.

(j) *Definition:* (1) The terms "U.S. No. 1", "U.S. Commercial", "U.S. No. 2", "Size B", "moderately skinned", and "slightly skinned" shall have the same meaning as when used in the United States Standards for Grades of Potatoes (7 CFR 51.1540-51.1566) including the tolerances set forth therein.

(5) The term non-white fleshed varieties of potatoes means all colored fleshed varieties of potatoes other than white-fleshed varieties of potatoes.

Dated: February 25, 1987.

William Doyle,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87-4897 Filed 3-6-87; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 500, 505, 505a, 505b, 508, 522, 523, 545, 552, 555, 556, 561, 563, 563b, 563c, 564, 569, 571, 572, 574, and 584

[No. 87-217]

Miscellaneous Conforming and Technical Amendments

Dated: March 3, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; miscellaneous conforming and technical amendments.

SUMMARY: The Federal Home Loan Bank Board ("Board") is amending its regulations in order to remove obsolete and incorrect citations to its regulations, to conform cross references of its regulations to the most current regulations, and to correct typographical and other technical errors contained in the Board's regulations.

EFFECTIVE DATE: March 9, 1987.

FOR FURTHER INFORMATION CONTACT: Carol J. Rosa, Paralegal Specialist, Regulations and Legislation Division, Office of General Counsel, (202) 377-7037, Federal Home Loan Bank Board,

1700 G Street, NW., Washington, DC 20552.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that, because of the minor, technical nature of these corrective amendments, notice and public procedure are unnecessary, as is the 30-day delay of the effective date.

List of Subjects in 12 CFR Parts 500, 505, 505a, 505b, 508, 522, 523, 545, 552, 555, 556, 561, 563, 563b, 563c, 564, 569, 571, 572, 574, and 584.

Accounting, Administrative practice and procedures, Bank deposit insurance, Conflict of interests, Consumer protection, Credit, Electronic funds transfer, Federal home loan banks, Federal Home Loan Bank Board, Flood insurance, Freedom of information, Holding companies, Investments, Manufactured homes, Mortgages, Organization and channelling of functions, Privacy, Reporting and recordkeeping requirements, Savings and loan associations, Securities, Sunshine Act.

Accordingly, the Board hereby amends Parts 500, 505, 505a, 505b, and 508, Subchapter A, Parts 522 and 523, Subchapter B, Parts 545, 552, 555, and 556, Subchapter C, Parts 561, 563, 563b, 563c, 564, 569, 571, 572, and 574, Subchapter D, and Part 584, Subchapter F, Chapter V, Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER A—GENERAL

PART 500—ORGANIZATION AND CHANNELLING OF FUNCTIONS

1. The authority citation for Part 500 continues to read as follows:

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 402, 48 Stat. 1256, as amended (12 U.S.C. 1725); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071; Reorg. Plan No. 6 of 1961, *reprinted in* 12 U.S.C.A. 1437 App. (West Supp. 1986).

§ 500.10 [Amended]

2. Amend § 500.10 by correcting the reference to "Reorganization Plan No. 6 of 1963" to read "Reorganization Plan No. 6 of 1961".

3. Amend § 500.32 by revising paragraphs (a); (b)(1), (3), (5), (6), (8), (9), (10), and (12); and the introductory text of paragraph (c) to read as follows:

§ 500.32 Offices of the Board; information and submittals.

(a) The headquarters of the Federal Home Loan Bank Board is located at 1700 G Street, NW., Washington, DC 20552. General information concerning the Federal Home Loan Bank Board, the Federal Home Loan Bank system, the Federal savings and loan system, or the

Federal Savings and Loan Insurance Corporation may be obtained in person at that location or by written request addressed to the Secretary to the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

(b) * * *

(1) Federal Home Loan Bank of Boston, One Financial Center, Boston, Massachusetts 02110, District 1: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.

* * *

(3) Federal Home Loan Bank of Pittsburgh, 20 Stanwix Street, One Riverfront Center, Pittsburgh, Pennsylvania 15222, District 3: Delaware, Pennsylvania, West Virginia.

* * *

(5) Federal Home Loan Bank of Cincinnati, 2000 Atrium II, 221 E. 4th Street, Cincinnati, Ohio 45202, District 5: Kentucky, Ohio, Tennessee.

(6) Federal Home Loan Bank of Indianapolis, 1350 Merchants Plaza, South Tower, 115 West Washington Street, Indianapolis, Indiana 46204, District 6: Indiana, Michigan.

* * *

(8) Federal Home Loan Bank of Des Moines, 907 Walnut Street, Des Moines, Iowa 50309, District 8: Iowa, Minnesota, Missouri, North Dakota, South Dakota.

(9) Federal Home Loan Bank of Dallas, 500 E. John Carpenter Freeway, P.O. Box 619026, Dallas/Fort Worth, Texas 75261, District 9: Arkansas, Louisiana, Mississippi, New Mexico, Texas.

(10) Federal Home Loan Bank of Topeka, 3 Townsite Plaza, 120 East 6th Street, Topeka, Kansas 66603, District 10: Colorado, Kansas, Nebraska, Oklahoma.

* * *

(12) Federal Home Loan Bank of Seattle, 1501 4th Avenue, 19th Floor, Seattle, Washington 98101, District 12: Alaska, Hawaii, Guam, Idaho, Montana, Oregon, Utah, Washington, Wyoming.

(c) A District Director-Examinations in charge of a staff of field examiners and office personnel is stationed in each of the Federal Home Loan Bank districts. Under the direction of the appropriate Principal Supervisory Agent, each District Director-Examinations is responsible for examinations conducted in this district. The addresses of the District Director-Examinations are as follows:

* * *

PART 505—AVAILABILITY AND CHARACTER OF RECORDS

4. The authority citation for Part 505 is revised to read as follows, and the authority citation located at the end of § 505.4 is removed.

Authority: Sec. 552, 80 Stat. 383, as amended (12 U.S.C. 552); sec. 11, 47 Stat. 733, as amended (12 U.S.C. 1431); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48

Stat. 132, as amended (12 U.S.C. 1464); sec. 402, 48 Stat. 1256, as amended (12 U.S.C. 1725); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1947 Supp., 1943-48 Comp., p. 1071.

5. Amend § 505.3 by removing paragraphs (c) and (d); by redesignating paragraphs (e) and (f) as the new paragraphs (c) and (d); and by revising the new paragraph (d) to read as follows:

§ 505.3 Published information.

* * *

(d) *Access to publications.* The publications referred to in paragraphs (b) and (c) of this section may be examined and, if available, copies may be obtained at the offices of the Board at the times and address set forth in paragraph (d) of § 505.4.

6. Amend § 505.4 by revising the first sentence of paragraph (d) to read as follows:

§ 505.4 Access to records.

* * *

(d) *Requests for records and other information.* Available records and other information of the Board subject to this section may be inspected or copied during regular business hours on regular business days at the offices of the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

* * *

PART 505a—RECORDS MAINTAINED ON INDIVIDUALS

7. The authority citation for Part 505a is revised to read as follows:

Authority: Sec. 552, 80 Stat. 383, as amended (12 U.S.C. 552); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 402, 48 Stat. 1256, as amended (12 U.S.C. 1725); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1947 Supp.

8. Amend § 505a.3 by revising paragraph (c) to read as follows:

§ 505a.3 Procedures for requests pertaining to individual records in a record system.

* * *

(c) Identification of record systems maintained by the Board and agency officials designated by the Board to receive requests for information concerning such record systems may be obtained from the Board's notice of existing record systems published annually in the Federal Register, copies of which are available upon request from the Office of the Secretary, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

PART 505b—PUBLIC INFORMATION REGARDING MEETINGS OF THE FEDERAL HOME LOAN BANK BOARD

9. The authority citation for Part 505b is revised to read as follows:

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); Pub. L. No. 94-409, 90 Stat. 1241 (1976); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071.

10. Amend § 505b.7 by revising the first sentence of the section to read as follows:

§ 505b.7 Accommodation for public attendance at open meetings.

Unless otherwise specified, open meetings are held in the Board Room on the sixth floor at the Board's headquarters located at 1700 G Street NW., Washington, DC 20552, at the time and on the date specified in the advance public notice; such information is posted in the main lobby at such location.

PART 508—PROMULGATION OF REGULATIONS AND AMENDMENTS

11. The authority citation for Part 508 is revised to read as follows and corrected to follow the table of contents of the part, and the authority citation located at the ends of the sections are removed.

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402-403, 48 Stat. 1256-1257, as amended (12 U.S.C. 1725-1726); Reorg. Plan No. 3 of 1947, 3 CFR, 1943-1848 Comp.

12. Amend § 508.13 by revising the first sentence of the section to read as follows:

§ 508.13 Participation of interested persons in a proposed amendment or rule.

After publication in the Federal Register of general notice of a proposed amendment or rule as prescribed in § 508.12, interested persons may participate in the making of such a proposed amendment or rule through the submission of written data, views, or arguments thereon delivered within the time prescribed in such general notice to the Secretary to the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and the time prescribed shall not be less than 15 days.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 522—ORGANIZATION OF THE BANKS

13. The authority citation for Part 522 continues to read as follows:

Authority: Sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); secs. 6-7, 47 Stat. 727, 730, as amended (12 U.S.C. 1426-1427); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402-403, 407, 48 Stat. 1256-1257, 1260, as amended (12 U.S.C. 1725-1726, 1730); sec. 207, 62 Stat. 692, as added by sec. 1a, 76 Stat. 1123, as amended (18 U.S.C. 207); sec. 602, 92 Stat. 2115, as amended (42 U.S.C. 8101 *et seq.*); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071; Reorg. Plan No. 6 of 1961, *reprinted in* 12 U.S.C.A. 1437 App. (West Supp. 1986).

§ 522.87 [Amended]

14. Amend § 522.87 by removing the designation "(a)" at the beginning of the section.

PART 523—MEMBERS OF BANKS

15 The authority citation for Part 523 is revised to read as follows, and the authority citations located at the ends of the sections are removed.

Authority: Sec. 5, 47 Stat. 727, as amended (12 U.S.C. 1425); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401-403, 405-407, 48 Stat. 1255-1257, 1259-1260, as amended (12 U.S.C. 1724-1726, 1728-1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 503, 88 Stat. 1521, as amended (12 U.S.C. 1691, 1691a); sec. 202(b), 87 Stat. 982, as amended (42 U.S.C. 4106(b)); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1947 Supp., 1943-48 Comp., p. 1071.

§ 523.3-3 [Amended]

16. Amend § 523.3-3 by correcting the reference to "§ 545.14(a)(3)(i)" to read "§ 541.18".

§ 523.10 [Amended]

17. Amend § 523.10(h)(5) by adding the word "which" after the word "and" and before the word "will" in the last phrase of the paragraph.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

18. The authority citation for Part 545 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402-403, 407, 48 Stat. 1256-1257, 1260, as amended (12 U.S.C. 1725-1726, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071.

§ 545.11 [Amended]

19. Amend § 545.11 by adding the title "General." after "(a)" and before the

world "Pursuant" in the first paragraph of the section; and by removing the second word "general" from the phrase "over other general general creditors" in the first sentence of paragraph (b).

§ 545.74 [Amended]

20. Amend § 545.74 by removing the word "a" after the word "has" and before the word "regulatory capital" in the first sentence of paragraph (d)(4).

§ 545.82 [Amended]

21. Amend § 545.82(e) by removing the phrase "net worth" wherever it appears in the paragraph and by substituting in lieu thereof the word "capital".

22. Amend § 545.138 by adding a heading to paragraph (f) to read as follows:

§ 545.138 Data-processing services.

(f) *Participation.* * * *

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

23. The authority citation for Part 552 is revised to read as follows and the authority citations located at the ends of the sections are removed.

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401-403, 405-407, 48 Stat. 1255-1257, 1259-1260, as amended (12 U.S.C. 1724-1726, 1728-1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-1948 Comp., p. 1071.

§ 522.2-2 [Amended]

24. Amend § 522.2-2(d) by adding the phrase "of 522.2-2" after the words "paragraph (g)"; and by removing the phrase "of this section".

25. Amend § 522.8 by correcting the references to "§§ 545.1-2, 545.1-3, 545.1-4 or 545.1-1 (a), (e), and (f)." in paragraph (b) to read "§§ 545.11 and 545.14."; by revising paragraph (f)(1) to read as follows; and by correcting the references to "§§ 545.1-2, 545.1-3, 545.1-4 or 545.1-1 (a), (e), and (f)." in paragraph (f)(2) to read "§§ 545.11 and 545.14."

§ 552.8 Savings deposits.

(f) *Ancillary provisions—(1) References in regulations.* To the extent not inconsistent with the provisions of this section all references in this subchapter to savings accounts (except this section) and to owners, holders, or holders of record of savings accounts

shall with respect to savings deposits authorized by this section be applicable in the same manner and to the same extent that they would be applicable if the savings deposits were savings deposits authorized by §§ 545.11 and 545.14.

§ 552.13 [Amended]

26. Amend § 552.13(h)(2) by removing the word "whith" from the first sentence of the paragraph and by substituting in lieu thereof the word "with".

§ 552.14 [Amended]

27. Amend § 552.14(b) by correcting the reference to "§ 552.13(i)(3)" to read "§ 552.13(j)(2)".

PART 555—BOARD RULINGS

28. The authority citation for Part 555 is revised to read as follows and the authority citations located at the ends of the sections are removed.

Authority: Sec. 552, 80 Stat. 383, as amended (5 U.S.C. 552); sec. 559, 80 Stat. 388, as amended (5 U.S.C. 559); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402-403, 48 Stat. 1256-1257, as amended (12 U.S.C. 1725-1726); Title IX, 82 Stat. 167, as added by Title XX, 92 Stat. 3728, as amended (15 U.S.C. 1693 *et seq.*); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071.

§ 555.10 [Amended]

29. Amend § 555.10 by correcting the reference to "§ 545.9-1(c)(3)," to read "§ 545.74(c)(3)."

§ 555.12 [Amended]

30. Amend § 555.12 by correcting the reference to "§ 545.14-1" to read "§ 545.93".

§ 555.17 [Amended]

31. Amend § 555.17 by correcting the reference to "§ 545.9-1 in paragraph (d)(2) to read "§ 545.74".

PART 556—STATEMENTS OF POLICY

32. The authority citation for Part 556 continues to read as follows:

Authority: sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 341, 96 Stat. 1505, as amended (12 U.S.C. 1701-j-3); secs. 402-403, 406-407, 48 Stat. 1256-1257, 1259-1260, as amended (12 U.S.C. 1725-1726, 1729-1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-1948 Comp., p. 1071.

§ 556.5 [Amended]

33. Amend § 556.5 by correcting the reference to "545.14(j)" in paragraph (i) to read "545.92".

§ 556.8 [Amended]

34. Amend § 556.8 by correcting the reference to "§ 545.24-2" to read "§§ 545.16 and 545.103".

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION**PART 561—DEFINITIONS**

35. The authority citation for Part 561 is revised to read as follows:

Authority: Sec. 1, Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401-407, 48 Stat. 1255-1260, as amended (12 U.S.C. 1724-1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-1948 Comp., p. 1071.

§ 561.13 [Amended]

36. Amend § 561.13 by correcting the word "then" referred to in the first "Provided further," phrase of paragraph (c)(1) to read "than"; and by correcting the word "accured" wherever it appears in paragraph (c)(2) to read "accrued".

§ 561.15 [Amended]

37. Amend § 561.15 by correcting the reference to "§ 545.6-14" in paragraph (b) to read "§ 545.38"; by correcting the reference to "§ 545.6-1(a)(5)" in paragraph (d)(2) to read "§ 545.38(a)"; by correcting the reference to "§ 545.7-1(a)(1)" in paragraph (j)(1) to read "§ 545.45(a)(1)"; and by correcting the reference to "§ 545.7-1(e)(4)" in paragraph (j)(3) to read "§ 545.45(d)(2)".

§ 561.17 [Amended]

38. Amend § 561.17 by correcting the reference to "§ 545.6-14" in paragraph (a) to read "§ 545.38".

PART 563—OPERATIONS

39. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401-407, 48 Stat. 1255-1260, as amended (12 U.S.C. 1724-1730); sec. 408, 82 Stat. 5, as amended

(12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-1948 Comp., p. 1071.

§ 563.4 [Amended]

40. Amend § 563.4 by correcting the phrase "Supervisory Agency, reasonable" in paragraph (d)(3) to read "Supervisory Agent, reasonably".

§ 563.7-4 [Amended]

41. Amend § 563.7-4 by removing the phrase "net worth" in paragraph (i)(2)(iv) and by substituting in lieu thereof the phrase "regulatory capital".

§ 563.8 [Amended]

42. Amend § 563.8 by adding the title "Security" after "(c)" and before the word "An" in the third paragraph of the section.

§ 563.8-1 [Amended]

43. Amend § 563.8-1 by correcting the word "affilitate" in the last sentence of the statement in paragraph (d)(1)(v)(c) to read "affiliate".

§ 563.9-7 [Amended]

44. Amend § 563.9-7(b) by correcting the reference to "§ 545.6-13" to read "§ 545.38".

§ 563.13-1 [Amended]

45. Amend § 563.13-1 by correcting the phrase "paragraph (b)" referred to in the introductory text of paragraph (e) to read "paragraph (c)".

§ 563.17-1 [Amended]

46. Amend § 563.17-1 by correcting the word "authorized" in the first sentence of paragraph (c)(8) to read "authorized".

47. Amend § 563.23-1 by revising paragraph (f)(3)(i) to read as follows:

§ 563.23-1 Premiums, discounts, charges, and credits with respect to loans; sale of real estate; and related items.

* * * * *

(f) * * *

(3) * * *

(i) The loan is secured by a first lien on the real estate and conforms to the Board's regulations as to maturity, loan-to-value ratios, and other restrictions (12 CFR 545.32, 545.33, 545.35, 545.36, 545.37) or to the regulations as to loans insured or guaranteed by a federal, state or local public entity (e.g., 12 CFR 545.38, 545.39), and * * *

* * * * *

§ 563.27 [Amended]

48. Amend § 563.27 by correcting the phrase "established of acquired" in the third sentence of paragraph (b) to read "established or acquired".

§ 563.35 [Amended]

49. Amend § 563.35 by correcting the reference to "§ 541.11" wherever it appears in paragraph (b) and the introductory text of paragraph (d) to read "§ 541.14".

§ 563.43 [Amended]

50. Amend § 563.43 by correcting the phrase "paragraph (b)(3)" in the third sentence of paragraph (b)(5) to read "paragraph (b)(2)".

51. Amend § 563.45 by revising the second sentence of paragraph (c); and the third sentence of paragraph (d) to read as follows:

§ 563.45 Disclosure.

* * * * *

(c) * * * Three of such copies shall be mailed or delivered to the Principal Supervisory Agent and the other three to the Securities Division, Office of the General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. * * *

(d) * * * Three of such copies shall be mailed or delivered to the Principal Supervisory Agent and the other three to the Securities Division, Office of the General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. * * *

* * * * *

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

52. The authority citation for Part 563b is revised to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by Sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a) sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); secs. 401-403, 405-407, 48 Stat. 1255-1257, 1259-1260, as amended (12 U.S.C. 1724-1726, 1728-1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); secs. 3(b), 12-14, 23, 48 Stat. 882, 892, 894-895, 901, as amended (15 U.S.C. 78c, 7-n, w); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-1948 Comp., p. 1071.

§ 563b.1 [Amended]

53. Amend § 563b.1 by removing the reference to "(1)" in paragraph (a); and by removing (a); and by removing paragraph (a)(2).

54. Amend § 563b.2 by revising paragraph (a)(19) to read as follows:

§ 563b.2 Definitions.

(a) * * *

(19) *Insured Institution.* For purposes of this part, the term "insured institution" has the same meaning as in § 561.1 of this subchapter.

* * * * *

55. Amend § 563b.101 by correcting the phrase "protection or account" in the last sentence of Item 14, Notes 2(f) to read "protection of account".

PART 563c—ACCOUNTING REQUIREMENTS

56. The authority citation for Part 563c is revised to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402-403, 407, 48 Stat. 1256-1257, 1260, as amended (12 U.S.C. 1725-1726, 1730); secs. 3(b), 12-14, 23, 48 Stat. 882, 892, 894-895, 901, as amended (15 U.S.C. 78c(b), m, n, w); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071.

§ 563c.102 [Amended]

57. Amend § 563c.102 by correcting the word "restrictions" in the second sentence of the statement text of I(1)(b) to read "restrictions".

PART 564—SETTLEMENT OF INSURANCE

58. The authority citation for Part 564 is revised to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401-405, 407, 48 Stat. 1255-1260, as amended (12 U.S.C. 1724-1728, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071.

59. Amend § 564.9 by revising the second sentence of paragraph (b) to read as follows:

§ 564.9 Joint accounts.

(b) * * * The foregoing provisions of this paragraph (b) shall not be applicable with respect to any account evidenced by a certificate of deposit which was issued pursuant to the approval granted by § 563.3-3 of this chapter.

PART 569—PROXIES

60. The authority citation for Part 569 is revised to read as follows:

Authority: Secs. 402-403, 407, 48 Stat. 1256-1257, 1260, as amended (12 U.S.C. 1725-1726, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071.

§ 569.3 [Amended]

61. Amend § 569.3 by adding the word "a" after the phrase "directors or" and before the word "committee" in paragraph (b)(2); by removing the reference to "(1)" in paragraph (c); and by removing paragraph (c)(2).

PART 571—STATEMENTS OF POLICY

62. The authority citation for Part 571 is revised to read as follows, and the authority citations located at the ends of the sections are removed.

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402-403, 407, 48 Stat. 1256-1257, 1260, as amended (12 U.S.C. 1725-1726, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071.

§ 571.8 [Amended]

63. Amend § 571.8 by correcting the reference to "545.7-3a, 545.7-11," in the first sentence of the section to read "545.43, 545.72,".

PART 572—NET WORTH CERTIFICATES

64. The authority citation for Part 572 is revised to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401, 403, 405-407, 48 Stat. 1255-1257, 1259-1260, as amended (12 U.S.C. 1724-1728, 1728-1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-1948 Comp., p. 1071.

65. Amend § 572.1 by correcting the phrase "purchase of rounding" in the last sentence of paragraph (c)(2) to read "purchase or rounding"; and by revising the last sentence of paragraph (e)(3) to read as follows:

§ 572.1 Purchase of net worth certificates.

(e) * * *

(3) * * * The Corporation may consider that a supervisory problem is satisfactorily resolved if the institution is making adequate progress under a plan acceptable to the Corporation for the complete resolution of that supervisory problem.

PART 574—ACQUISITION OF CONTROL OF INSURED INSTITUTIONS

66. The authority citation for Part 574 is revised to read as follows:

Authority: Sec. 407, 48 Stat. 1260, as amended (12 U.S.C. 1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a).

§ 574.3 [Amended]

67. Amend § 574.3 by correcting the reference to "§ 546," in paragraph (c)(2)(iii) to read "Part 546, and § 546.1."

SUBCHAPTER F—REGULATIONS FOR SAVINGS AND LOAN HOLDING COMPANIES

PART 584—REGULATED ACTIVITIES

68. The authority citation for Part 584 is revised to read as follows, and the authority citations located at the ends of the sections are removed.

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401-403, 405-407, 48 Stat. 1255-1257, 1259-1260, as amended (12 U.S.C. 1724-1728, 1728-1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-1948 Comp., p. 1071.

§ 584.2-1 [Amended]

69. Amend § 584.2-1 by correcting the reference to "545.9, and 545.9-3" in paragraph (a) to read "and 545.71"; and by correcting the reference to "§ 545.9-1(k)(7)" in paragraph (b)(1)(v) to read "§ 545.50(b)".

§ 584.4 [Amended]

70. Amend § 584.4 by removing the word "of" from the phrase "specified in of § 584.2(b)" in paragraph (a).

§ 584.6 [Amended]

71. Amend § 584.6 by correcting the phrase "or such service corporation: *Provided*," in paragraph (c)(1) to read "of such service corporation: *Provided*,".

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87-4820 Filed 3-6-87; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 87-28]

Change in the Customs Service Field Organization; Green Cove Springs, FL

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by designating, on a permanent basis, Green Cove Springs, Florida, as a Customs station. Green Cove Springs was designated a Customs station on a temporary basis in 1984. Due to an increasing workload at the station, it now warrants permanent status. This action continues Customs nationwide effort to obtain more

efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public.

EFFECTIVE DATES: The regulations are effective March 9, 1987, except for Amendment 2 which is effective October 9, 1986.

FOR FURTHER INFORMATION CONTACT: Denise Crawford, Office of Inspection and Control, (202-566-9425).

SUPPLEMENTARY INFORMATION:

Background

Customs ports of entry and stations are locations where Customs officers are placed for the purpose of accepting the entry of merchandise, collecting duties, examining baggage, clearing passengers, and enforcing the various provisions of the customs laws and other laws.

The significant difference between ports of entry and stations is that at stations, the Federal Government is reimbursed for:

(1) The salaries and expenses of its officers or employees for services rendered in connection with the entry or clearance of vessels; and

(2) Except as otherwise provided by the Customs Regulations, the expenses (including any per diem allowed in lieu of subsistence), but not the salaries of its officers or employees, for service rendered in connection with the entry or delivery of merchandise.

The list of designated Customs stations is set forth in § 101.4(c), Customs Regulations (19 CFR 101.4(c)).

As part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, on November 19, 1984, Green Cove Springs, Florida, was designated as a temporary Customs station in accordance with § 101.4(d), Customs Regulations (19 CFR 101.4(d)). Subsequent to that designation, increasing requests for Customs services have been experienced at that location, and the Southeast Regional Commissioner of Customs believes permanent station status is warranted. Since staffing is readily available and the cost of services provided is reimbursable, it will not impose any budget burden. Therefore, the designation of Green Cove Springs, Florida, as a Customs station is being made permanent, effective retroactively to October 9, 1986. The station is supervised by the Jacksonville, Florida, port of entry within the Tampa, Florida, district.

By T.D. 77-241, published in the Federal Register on October 12, 1977 (42

FR 54937), the list of the Customs field organization set forth in Part 101, Customs Regulations (19 CFR Part 101), was extensively revised. The Customs stations designated by the Commissioner of Customs were set forth in § 101.4(c) together with the Customs districts within which they are located and the ports of entry having supervision over the Customs stations. This list has been amended numerous times since it was revised in 1977.

To reflect the designation of Green Cove Springs as a permanent station, this document further amends the list in § 101.4(c) by adding "Green Cove Springs, Fla.", under the column headed "Customs stations" and by adding "Tampa, Fla." and "Jacksonville" under the columns headed "District" and "Port of entry having supervision", respectively.

As part of this regulatory project, it has been determined that several of the stations listed in § 101.4(c) contain printing errors either in the district or port of entry having supervision. To avoid any confusion, this document also corrects those errors.

Executive Order 12291 and Regulatory Flexibility Act

Because this amendment is not a "major rule" within the criteria provided in section 1(b) of E.O. 12291, a regulatory impact analysis is not required. Further, because notice and public procedure are not required, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Customs routinely establishes Customs stations throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although this amendment may have a limited effect upon some small entities in the area affected, it is not expected to be significant because establishing stations in other areas has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by this Act. Nor is it expected to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Notice, Public Comment, and Delayed Effective Date

Because the amendment relating to Green Cove Springs, Florida, is a change in agency organization, pursuant to 5 U.S.C. 553(b)(B), notice and public comment are unnecessary. Also, because this amendment merely updates the Customs Regulations to reflect Customs current field organization,

pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Imports, Organization and functions (Government agencies).

Amendments to the Regulations

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101, Customs Regulations (19 CFR Part 101), continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1, 66, 1202 (Gen. Hdnote 11), 1624; Reorganization Plan 1 of 1965, 3 CFR 1965 Supp.

§ 101.4 [Amended]

2. To reflect the designation of Green Cove Springs, Florida, as a Customs station, the list of stations in § 101.4(c) is amended by inserting "Tampa, Fla." directly below "Miami, Fla." in the column headed "District", by inserting "Green Cove Springs, Fla." directly below "Fort Pierce, Fla." in the column headed "Customs stations" and by inserting "Jacksonville" directly below "West Palm Beach" in the column headed "Port of entry having supervision."

3. To correct printing errors in the list of stations, § 101.4(c) is further amended in the following manner:

(a) Under the column headed "Port of entry having supervision", the words "Del Rio", appearing directly below "Morgan City" are removed.

(b) The listing for the Dallas/Fort Worth, Texas, and Laredo, Texas, stations is revised to read as follows:

District	Customs stations	Port of entry having supervision
Dallas/Fort Worth, Tex.	Muskogee, Okla.	Tulsa.
Laredo, Tex.	Amistad Dam, Tex. ... Falcon Dam, Tex. Los Ebanos, Tex.	Del Rio. Roma. Rio Grande City.

(c) Under the column headed "Customs stations" and "Port of entry having supervision", the second listing for "Tucson, Ariz." and "Do.", respectively, are removed.

(d) The listing for the Great Falls, Montana, stations is revised to read as follows:

District	Customs stations	Port of entry having supervision
Great Falls, Mont....	Colorado Springs, Colo. Wild Horse, Mont.... Willow Creek, Mont.	Denver, Great Falls, Do.

Michael H. Lane,

Acting Commissioner of Customs.

Approved:

Francis A. Keating, II,

Assistant Secretary of the Treasury.

February 25, 1987.

[FR Doc. 87-4890 Filed 3-6-87; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 76N-052B]

Bronchodilator Drug Products for Over-the-Counter Human Use; Final Monograph; OMB Approval of Requirements

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Office of Management and Budget (OMB) has approved the collection of information requirement concerning its final rule on over-the-counter (OTC) bronchodilator drug products. The agency is amending that regulation to reflect OMB's approval.

EFFECTIVE DATE: October 2, 1987.

FOR FURTHER INFORMATION CONTACT:

William E. Gilbertson, Center for Drugs and Biologics (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 2, 1986 (51 FR 35326), FDA issued a final rule in the form of a final monograph effective October 2, 1987, establishing conditions under which OTC bronchodilator drug products (drug products used in the symptomatic treatment of wheezing and shortness of breath of asthma) are generally recognized as safe and effective and not misbranded. In that document (51 FR 35339), FDA announced that it had submitted the final rule to the Office of Management and Budget (OMB) for approval of the collection of information requirement contained in § 341.76(d)(2)(i)(b).

OMB has approved the collection of information requirement under OMB control number 0910-0237. This document announces OMB's approval and amends the regulation to reflect that approval.

Because this amendment is nonsubstantive, notice and public procedure are unnecessary (5 U.S.C. 553(b)(B) and (d)).

List of Subjects in 21 CFR Part 341

Labeling, Over-the-counter drugs. Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTI-ASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR Part 341 continues to read as follows:

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041-1042 as amended, 1050-1053 as amended, 1055-1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.11.

2. In § 341.76 by adding a parenthetical statement at the end of the section, to read as follows:

§ 341.76 Labeling of bronchodilator drug products.

(Collection of information requirement approved by the Office of Management and Budget under number 0910-0237.)

Dated: March 2, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-4818 Filed 3-6-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket Nos. 79-37, 83-26, 85-1, 85-3, 85-15, 85-27 and 87-8]

National Standards for Traffic Control Devices; Manual on Uniform Traffic Control Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; amendments to material incorporated by reference and request for comments.

SUMMARY: This document contains notice of amendments to the Manual on Uniform Traffic Control Devices (MUTCD) which are being adopted by the Federal Highway Administration for inclusion therein. The MUTCD is incorporated by reference in 23 CFR Part 655, Subpart F and recognized as the national standard for traffic control devices on all public roads. The amendments affect various parts of the MUTCD and are intended to expedite traffic, improve safety and provide a more uniform application of highway signs, signals, and markings. Comments on certain editorial amendments to the MUTCD, specified in SUPPLEMENTARY INFORMATION under "Discussion of Editorial Changes", are requested. A conforming amendment to Part 655 is also being made to update the citation to the MUTCD.

DATES: Effective March 9, 1987.

Comments on the editorial amendments to the MUTCD must be received on or before April 3, 1987.

ADDRESS: Submit written comments, preferably in triplicate, on editorial changes to Docket No. 87-8, to the Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT:

Mr. Philip O. Russell, Office of Traffic Operations, (202) 366-2184, or Mr. Michael J. Laska, Office of Chief Counsel, (202) 366-1383, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D. It may be purchased for \$44.00 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 950-036-00000-1. The purchase of a MUTCD includes a subscription service for adopted revisions.

This document contains the dispositions of proposals for changes in the MUTCD which were received or originated by the FHWA. Previous Federal Register actions regarding these requests are listed in the following table:

Item	Request No.	Title	Published in Federal Register FHWA Docket No.
1	1-4 (Chng.)	Manual Changes, Interpretations and Authority to Experiment (Section 1A-6)	Docket No. 85-27 (50 FR 51404, December 17, 1985)
2	II-5 (Chng.)	Recreational and Cultural Interest Area Signs	Docket Nos. 79-37 (45 FR 982 January 3, 1980); 85-1 (50 FR 10506, March 15, 1985);
3	II-33 (Chng.)	Hazardous Material Routing Sign	Docket Nos. 79-37 (45 FR 982 January 3, 1980); 79-37, Notice 2 (47 FR 5238, February 4, 1982); 83-26 (49 FR 1213, January 10, 1984); 79-37, 83-26, and 85-15 (50 FR 21857, May 29, 1985)
4	II-37 (Chng.)	YIELD Signs in Conjunction with STOP Signs	Docket Nos. 79-37 (45 FR 982, January 3, 1980); 79-37, Notice 2 (47 FR 5238, February 4, 1982); 79-35, 79-37, and 80-10 (48 FR 1047, January 10, 1983)
5	II-84 (Chng.)	Trail Markers on Interstates	Docket Nos. 83-26 (49 FR 1213, January 10, 1984); 79-31, 79-37, and 83-26 (49 FR 38940, October 2, 1984)
6	II-86 (Chng.)	Signs for STAA Truck Routes	Docket Nos. 79-37, 83-26, and 85-15 (50 FR 21857, May 29, 1985)
7	II-106 (Chng.)	Use of No Parking Symbol Sign (R8-3a) in Rural Areas	Docket No. 85-27 (50 FR 51404, December 17, 1985)
8	II-107 (Chng.)	Standards for and Applications of Lane-Use Control Signs at Intersections	Docket No. 85-27 (50 FR 51404, December 17, 1985)
9	II-109 (Chng.)	Cloverleaf With Collector-Distributor Roadways	Docket No. 85-27 (50 FR 51404, December 17, 1985)
10	III-30 (Chng.)	Wrong Way and Lane Use Pavement Marking Arrows	Docket No. 85-27 (50 FR 51404, December 17, 1985)
11	III-38 (Chng.)	Warrants for No-Passing Zones at Curves	Docket No. 85-27 (50 FR 51404, December 17, 1985)
12	III-39 (Chng.)	Delinquent Placement and Spacing	Docket No. 85-27 (50 FR 51404, December 17, 1985)
13	IV-6 (Chng.)	Alternative to Full Signalization at School Crossings	Docket No. 80-10 (48 FR 1047, January 10, 1983)
14	IV-52 (Chng.)	Median Width Criteria for Pedestrian Signals	Docket No. 85-27 (50 FR 51404, December 17, 1985)
15	IV-58 (Chng.)	A Required Yellow Clearance Interval and Left Turn Signal Displays	Docket No. 85-27 (50 FR 51404, December 17, 1985)
16	IV-66 (Chng.)	Warrants for Traffic Signal Installation	Docket No. 85-27 (50 FR 51404, December 17, 1985)
17	IV-67 (Chng.)	Accident Experience Warrant	Docket No. 85-27 (50 FR 51404, December 17, 1985)
18	IV-68 (Chng.)	Effects of Right Turn On Red on Volume Warrants	Docket No. 85-27 (50 FR 51404, December 17, 1985)
19	VI-3 (Chng.)	Temporary Payment Markings in Construction and Maintenance Areas	Docket Nos. 79-37 (45 FR 982 January 3, 1980); 79-37, Notice 2 (47 FR 5238, February 4, 1982); 83-26 (49 FR 1213, January 10, 1984); 79-37, 83-26, and 85-15 (50 FR 21857, May 29, 1985)
20	VI-33 (Chng.)	Location of Reflective Collars With Respect to Top of Cones	Docket No. 85-27 (50 FR 51404, December 17, 1985)
21	VI-34 (Chng.)	Size and Location of Additional Reflective Bands on Cones	Docket No. 85-27 (50 FR 51404, December 17, 1985)
22	VI-35 (Chng.)	ROAD (STREET) CLOSED Sign	Docket No. 85-27 (50 FR 51404, December 17, 1985)
23	VI-36 (Chng.)	Length of Construction Sign	Docket No. 85-27 (50 FR 51404, December 17, 1985)
24	VIII-16 (Chng.)	TRACKS OUT OF SERVICE Sign (R8-9)	Docket Nos. 79-37, 83-26, and 85-15 (50 FR 21857, May 29, 1985)
25	IV-68 (Chng.)	Delete Traffic Signal Preemption Drawing, Figure 8-8	Docket No. 85-27 (50 FR 51404, December 17, 1985)
26	IX-4 (Chng.)	U.S. Bicycle Route Marker (M1-9)	Docket No. 85-27 (50 FR 51404, December 17, 1985)
27	I-7 (Chng.)	Editorial Changes	Not Previously Published in FEDERAL REGISTER
28	IV-71 (Chng.)	Adoption Procedures for Symbols on Traffic Control Devices	Not Previously Published in FEDERAL REGISTER
29	VI-29 (Chng.)	Deferred Ruling	Not Previously Published in FEDERAL REGISTER
29	VI-29 (Chng.)	Vehicle Change Interval	Not Previously Published in FEDERAL REGISTER
29	VI-29 (Chng.)	Deferred Ruling	Not Previously Published in FEDERAL REGISTER
29	VI-29 (Chng.)	Minimum Diameter of Drums	Docket Nos. 79-37, 83-26, and 85-15 (50 FR 21857, May 29, 1985)

Advance copies of the text changes to the MUTCD for all of the adopted requests will be distributed to everyone currently appearing on the FHWA Federal Register mailing list for MUTCD matters. Those wishing to receive an advance copy of the text changes or to be added to this mailing list should write to the Federal Highway Administration, Office of Traffic Operations, HTO-21, 400 Seventh Street, SW., Washington, DC 20590.

Discussion of Requests

These amendments are being processed in accordance with the rulemaking procedure of the Administrative Procedure Act (5 U.S.C. 553) and the Department of Transportation's regulatory policies and procedures.

Each request is assigned an identification number which indicates, by Roman numeral, the primary organizational part of the MUTCD affected and, by Arabic numeral, the order in which the request was received.

The FHWA has reviewed the comments received in response to the notices and the other information relating to the MUTCD and these proposals. The FHWA is acting on the following requests for change to the MUTCD. Each action and its basis is summarized below:

(1) Request I-4 (Chng.)—Manual Changes, Interpretations and Authority to Experiment (Section 1A-6)

This amendment to Section 1A-6 adopts procedures which are designed to improve the timeliness and completeness of amendments, interpretations, and experimentations.

Of the 18 commenters, 16 were in favor. The other 2 were neutral, and offered no specific comment on the proposal.

The amendment imposes no additional costs on highway agencies. No compliance date is needed for this amendment.

(2) Request II-5 (Chng.)—Recreational and Cultural Interest Area Signs

This amendment to Sections 2D-44, 2D-49, 2E-39, and 2F-41 combines all of the pertinent provisions on recreational and cultural interest area signing into one subpart, II-H Recreational and Cultural Interest Area Signs.

Twenty-one of the 22 commenters concurred with the FHWA proposal. Thirteen of the 21 commenters recommended that some changes be made to the test of the MUTCD as proposed by the FHWA. The FHWA accommodated most of the recommendations by making two changes to the amendment. First, the signs which are not intended to be used

as traffic control devices on roadways open to public travel will be acknowledged in the MUTCD as being a necessary part of the system of signs for recreational and cultural interest areas and will be referenced in the MUTCD in that context. Second, the signs which are intended to be used as traffic control devices on roadways open to public travel will be stratified according to their proper use on two types of roads that are derived from the FHWA Functional Classification System.

These signs have been allowed within public parks on recreational roads since August 30, 1974. Most public agencies responsible for recreational and cultural interest areas are using these signs. This amendment will have some impact on the highway agencies that are responsible for signs on the roads adjacent to and leading to these areas. To mitigate these costs, a compliance date of December 31, 1993, is established.

(3) Request II-33 (Chng.)—Hazardous Material Routing Sign

This amendment to Section 2B-43 adds a new subsection titled Hazardous Cargo Signs (R14-2, R14-3). The R14-2 or a word message alternate sign may be used to mark routes which have been designated for the transport of all hazardous materials. The R14-3 or a

word message alternate sign may be used to mark routes or entrances to routes where hazardous materials are prohibited. The amendment also adopts a symbol to be used on the Hazardous Cargo Symbol Signs (R14-2, R14-3).

Nineteen of the 26 commenters concurred with the need for adoption of uniform signs and the design proposed by the FHWA. In addition, three commenters expressed a need for signing, but preferred a word message or another symbol for the signs.

This amendment should provide safety benefits for both highway agencies and the trucking industry. To mitigate the costs to highway agencies of bringing their symbol signs into conformance with this standard, a compliance date of December 31, 1989, is established.

(4) Request II-37 (Chng.)—YIELD Signs in Conjunction With STOP Signs

This amendment to Section 2B-8 allows the use of a YIELD sign in conjunction with STOP signs under one set of circumstances. Figure 1—YIELD SIGNS IN CONJUNCTION WITH STOP SIGNS, which appeared in FHWA Docket 79-37, Notice 2 (47 FR 5238, February 4, 1982), and very specific language are added to Section 2B-8 to describe the special set of circumstances. The National Committee on Uniform Traffic Control Devices (NCUTCD) developed this specific language and has recommended its inclusion in the MUTCD.

There were 44 comments received in response to the notice of proposed amendments in the February 4, 1982, *Federal Register* (45 FR 5238). Thirteen commenters concurred. Of the 31 commenters who opposed the amendment, two did not give their reasons and six successfully use signs such as "RIGHT TURN NO STOP" with a STOP sign to provide the same right turn free flow traffic movement. The remaining 23 commenters were basically opposed to allowing a free flow right turn at any intersection approach controlled by either a STOP or YIELD sign.

Figure 1 and the specific language referred to in the preceding paragraphs were included in an official ballot of the American Association of State Highway and Transportation Officials. Of the 49 responses to this ballot, 34 States concurred, 3 concurred in part and 12 did not concur. The Institute of Transportation Engineers also supports this change.

The second paragraph of Section 2B-8, Warrants for Yield Signs, states that the YIELD sign should not *ordinarily* be used to control major traffic flows.

Based on our review of the current wording in the MUTCD, the docket comments and the results of the AASHTO ballot, the FHWA finds that the amendment describes one condition which can be controlled by the YIELD sign.

This change imposes no additional costs nor mandates direct action by highway agencies. No compliance date is required to implement this amendment.

(5) Request II-84 (Chng.)—Trail Markers on Interstates

This amendment removes language from Section 2D-51 which prohibited highway agencies from placing on the Interstate System informational plaques or shields designed to provide the traveling public with route guidance in following a trail of particular cultural, historical, or educational interest. States are encouraged to establish a policy for the use of these signs.

Eleven of the 20 commenters opposed the adoption of this amendment. The most common reasons given for opposing the amendment were (1) the possibility that the change could lead to unnecessary or prolific signing, and (2) other route guidance methods are available. The FHWA recognizes that in many cases maps and/or brochures are the preferred method of advising the few interested people of the location of trails. However, the issue of whether maps and/or brochures or informational plaques or shields will best serve a particular State's need is best determined by each State, not by the MUTCD.

Since trail marking is voluntary, this amendment imposes no additional costs on highway agencies. No compliance date is needed to implement this change.

(6) Request II-86 (Chng.)—Signs for STAA Truck Routes

This amendment revises Section 2A-11, adds a new subsection 2B-43c titled National Network Signs, and adopts a single symbol to be used on all route and services signing associated with the National Network. Word message signs are not acceptable for marking the National Network.

Twenty of the 26 commenters concurred in this amendment. In addition one State stated that they preferred to use maps to inform motorists of routes which are on the National Network. The use of signs is voluntary and maps or lists of routes were established as acceptable alternatives in the final rule published on June 5, 1984 (49 FR 23302; 23 CFR 658).

Because the signing of routes and services on the National Network is voluntary, the amendment will impose minor additional costs only on those highway agencies which decide to use signing as a method of identifying National Network routes. To offset these additional costs a compliance date of December 31, 1989, is established.

(7) Request II-106 (Chng.)—Use of No Parking Symbol Sign (R8-3a) in Rural Areas

The Michigan Department of Transportation requested that Section 2B-33 of the MUTCD be amended to establish the 12-by 12-inch R8-3a Sign as the minimum size No parking symbol sign for use in rural areas.

The FHWA did not support this request. A total of 18 comments were received. Of these 15 concurred with the FHWA position, 2 favored a change, and 1 was neutral. The request is denied. The minimum size of No Parking Symbol Sign (R8-3a) for use in rural areas remains 24 by 24 inches.

(8) Request II-107 (Chng.)—Standards for and Applications of Lane Use Control Signs at Intersections

This amendment to Sections 2B-17 and 2B-18 adds considerable flexibility in the use of Lane-Use control signs and adds no new requirements for their use.

Of the 24 commenters, 23 favored the amendment.

This amendment imposes no additional cost on State and local highway agencies. No compliance date is required for this amendment.

(9) Request II-109 (Chng.)—Cloverleaf With Collector-Distributor Roadways

This amendment to Section 2F-27 and Figure 2-37 allows the exits from the collector-distributor (CD) roadway to the exit ramps to be numbered with an appropriate suffix in basically the same manner as are the exits at a normal cloverleaf interchange.

All 18 commenters concur with this amendment.

Since the use of exit numbering for exits from CD roadways is discretionary, this amendment imposes no additional costs on highway agencies. No compliance date other than the effective date of this final rule is required.

(10) Request III-30 (Chng.)—Wrong Way and Lane Use Pavement Marking Arrows

This amendment of several provisions of Sections 2E and 3B improves the design and placement of the pavement marking arrows and provides better

detail concerning the role of arrows in wrong way and lane use control.

Twenty of the 22 commenters concurred in the proposed amendment.

The amendment does not place any new mandates on highway agencies but will improve the uniformity and effectiveness of pavement marking arrows at no additional cost. No compliance date is needed to implement this change.

(11) Request III-38 (Chng.)—Warrants for No-Passing Zones at Curves

This amendment to Section 3B-5 and Figure 3-8 provides that the speed portion of the warrants will be based on the off-peak 85 percentile or the posted speed limit, whichever is higher. The table in Section 3B-5 is also expanded to give minimum passing sight distances in 5 MPH increments. Based on docket comments, the FHWA has decided to add to the warrants a minimum passing sight distance for 25 MPH.

Of the 18 commenters, 17 concurred with the basis of this proposal.

This amendment imposes no additional mandates on highway agencies and should in some cases reduce the number of speed studies required. A compliance date of December 31, 1991, is established for this amendment.

(12) Request III-39 (Chng.)—Delineator Placement and Spacing

The proposed amendment to Section 3D-5 would have changed the height and offset distances for delineators from a "shall" condition to a "may" condition.

Seventeen of the 20 commenters supported this proposal. Two State Departments of Transportation and the NCUTCD commented that the MUTCD should contain recommended height and offset distances. After reevaluation of the comments the FHWA accepts these recommendations and will amend the first paragraph of Section 3D-5 to read: "Delineators, if used, should be mounted on suitable supports so that the top of the reflecting head is about 4 feet above the near roadway edge. They should be placed not less than 2 or more than 8 feet outside the outer edge of the shoulder, or if appropriate, in the line of the roadside barrier that is 8 feet or less outside the outer edge of the shoulder."

This change allows the use of engineering judgment when placing roadside delineators without imposing any additional costs. No compliance date is needed.

(13) Request IV-8 (Chng.)—Alternative to Full Signalization at School Crossings.

This request was initiated by the city of Seattle in 1974 to allow the use of traffic signals on the main street approaches and STOP signs (no signal display) on the side street approaches at intersections with pedestrian crossings. The concept has received prolonged review and has been addressed in a research study. A major concern with the concept is that its widespread application could result in the degradation of the meaning of a green traffic signal on a national basis and that widespread use could result in a deterioration in the authority and effectiveness of traffic signals and pedestrian safety, in general.

The FHWA provided notice on January 10, 1983, at 48 FR 1047 that action on the request was being deferred pending availability of additional research or study data. No such research or study results have since been provided.

The FHWA is, therefore, denying this request for a change in the absence of definitive research results and in recognition of widespread concern for maintenance of traffic signal credibility. This would not preclude a new request, if data, in the future, become available definitively supporting the change and demonstrating that it would not adversely affect the credibility of traffic signals.

Continuance of existing installations was approved as part of MUTCD official ruling Sg-44 on April 17, 1975. These installations should be removed or converted to conforming installations by December 31, 1996.

(14) Request IV-52 (Chng.)—Median Width Criteria for Pedestrian Signals

Sections 4C-5, 4D-7 and 7D-9 are amended to allow engineering judgment in determining whether a given median is sufficient enough to serve as a pedestrian refuge and to provide consistency in these sections relative to median width considerations.

There were 19 commenters, 17 of which were in favor of the amendment.

This amendment provides greater latitude in determining the need for a traffic signal and in the timing of pedestrian clearance intervals and imposes no additional cost. No compliance date is needed to implement this amendment.

(15) Request IV-58 (Chng.)—A Required Yellow Arrow Clearance Interval and Left Turn Signal Displays

Sections 2B-17, 4B-5, 4B-6, 4B-12 and 4B-18 are amended. A yellow arrow indication is required for a clearance display following a Green Arrow. The amendment eliminates the optional use

of the circular yellow indication for this purpose. The amendment also allows the use of a flashing arrow indication and clarifies various design requirements for Left Turn displays.

Section 4B-15, fifth paragraph requires that "A clearance interval shall be provided between the termination of a GREEN ARROW indication and the showing of a green indication to any conflicting traffic movement." Presently this clearance indication may be via a Steady Yellow Arrow indication, or optionally Circular Yellow indication in signal faces used exclusively to control a single directional movement. This amendment eliminates the use of the optional Circular Yellow indication for this purpose.

Also, the following modification is made to 4B-18 to clarify the intent of the MUTCD relative to left turn signals.

1. In the first sentence of the fourth paragraph, delete the word "automatic".

2. In the second sentence of the fourth paragraph, the word "automatic" is replaced by the word "programmed".

3. The fifth paragraph which pertains to the change from flashing to stop-and-go operation is deleted.

4. In the first sentence of the sixth paragraph, delete the word "automatic".

5. A seventh paragraph is added to explain the design requirements for flashing arrows.

Of the 24 commenters, 14, including the NCUTCD, were in favor of the changes. Nine commenters were opposed to the change and 1 commenter wanted final action on the request to be deferred. Of the 9 opposed, 4 agreed in principle, but raised questions concerning the target value of the yellow arrow. This has not caused a problem at locations where the yellow arrow is now used.

This amendment causes some financial impact where existing 8 inch circular yellow indications will have to be replaced with 12 inch yellow arrows. A compliance date of December 31, 1997, is established to mitigate the cost of changing the indications. The remainder of the amendment is editorial in nature or to clarify the existing intent; therefore no compliance date is provided.

(16) Request IV-66 (Chng.)—Warrants for Traffic Signal Installations.

Section 4C-2 of the MUTCD is amended to make it clear that the satisfaction of a warrant is not, in itself, a mandate for a signal. This amendment will stipulate the need for an engineering study, considering factors, other than those outlined in the warrant, to indicate whether installation of a

signal will improve safety and/or operations.

There were 21 commenters, 20 of which were in favor of the request and 1 opposed.

This amendment will provide more explicit guidelines in justifying a signal. This amendment imposes no additional cost on State and local highway agencies. No compliance date is needed to implement this change.

(17) Request IV-67 (Chng.)—Accident Experience Warrant

The wording in Section 4C-8 is amended so that the wording in Warrant 6 is compatible with each jurisdiction reporting level.

There were 18 commenters all of which were in favor of the amendment.

This change makes the Accident Experience Warrant more realistic but imposes no additional costs. No compliance date is needed to implement this change.

(18) Request IV-68 (Chng.)—Effects of Right Turn On Red on Volume Warrants

This amendment to Section 4C-2 allows consideration of Right Turn Movements on the Volume Warrants.

There were 19 commenters, 18 of which were in favor of the request and one was neutral.

This amendment increases the usefulness of the Volume Warrants but imposes no additional costs. No compliance date is needed to implement this change.

(19) Request VI-3 (Chng.)—Temporary Pavement Markings in Construction and Maintenance Areas

This amendment to Parts III and VI requires temporary pavement markings as follows: (a) Temporary lane stripes and/or skip centerline stripes on all facilities of at least 4-feet long with a maximum 36-foot gap, or in areas of severe curvature, 2-feet long with a maximum 18-foot gap, (b) no passing zones should be striped in accordance with the requirements for permanent markings set forth in Sections 3B-4 and 3B-5 of the MUTCD, (c) edgelines, when used, should be in accordance with the requirements for permanent markings set forth in Section 3B-6 of the MUTCD, and (d) temporary pavement markings shall be fully retroreflective.

This amendment allows the use of raised pavement markers as provided for in Section 3B-15, Raised Pavement Markers Supplementing Other Markings and Section 3B-16, Substituting for Pavement Markings. A group of at least three retroreflective markers may be substituted for a broken line segment.

Nearly all of the 30 commenters agreed on the need for temporary markings and/or signs to indicate centerlines, lane lines, and no passing zones in construction and maintenance work zones. Twelve commenters concurred with the FHWA proposal. Seven commenters objected only to the length of broken line segments, their spacing or the type of traffic control devices used to control no passing. Four commenters requested that action on this amendment be deferred pending additional research results. Six commenters opposed adoption of the amendment but did not provide specific reasons for their position.

The FHWA finds that the safety and traffic operations can be improved in construction and maintenance work zones through the consistent use of uniform temporary pavement markings and other traffic control devices. If subsequent research finds that fewer markings are appropriate, then the standards herein can be amended.

This amendment imposes some additional costs on and requires direct action by some highway agencies. To offset these costs a compliance date of December 31, 1988, has been established.

(20) Request VI-33 (Chng.)—Location of Reflective Collars With Respect to Top of Cones

This amendment to Sections 6C-3 and 3F-2 provides an unobstructed hand hold at top of cones from 3 inches to 4 inches.

All 18 of the commenters concurred with the basis of this change. The NCUTCD recommended that the text be revised to read "Reflectorization of cones shall be provided by a minimum 6-inch white band placed approximately 3 inches from the top".

The FHWA finds that 3 inches is the absolute minimum needed for a hand hold at the top of cones. Therefore, the amendment will provide that the 6-inch band of retroreflective material be placed a minimum of 3, but no more than 4 inches, from the top.

This change improves the night performance of cones by keeping the retroreflective collars cleaner and provides a larger area of retroreflective material at no cost to highway agencies. To offset the impact on contractors and collar suppliers a compliance date for this amendment of December 31, 1989 is established.

(21) Request VI-34 (Chng.)—Size and Location of Additional Reflective Bands on Cones

This amendment to Sections 6C-3 and 3F-2 provides an additional; 4-inch band

of retroreflective material to be placed 2 inches below the present standard 6-inch band on 28-inch cones. It should be understood that the retroreflective bands may be individual bands or may be fabricated as one unit with a 2-inch band of nonretroreflective orange material separating the retroreflective material.

With this latter provision, all 18 commenters concurred with the amendment.

The amendment will improve the visibility of 28-inch cones at a negligible cost to highway agencies. To offset the impact on contractors and collar suppliers the compliance date for this amendment is December 31, 1989.

(22) Request VI-35 (Chng.)—ROAD (STREET) CLOSED Sign

The amendment to Section 6B-8 eliminates the mandatory use of the ROAD (STREET) CLOSED Sign (R11-2) by changing the "shall" condition to a "may" condition. This does not preclude highway agencies from adopting more rigid criteria for the sign's use.

Seventeen of the 20 commenters concurred with the FHWA position, 2 commenters favored retaining the mandatory language and 1 commenter, the NCUTCD proposed that the text be revised from mandatory (shall) to recommended (should) language.

This amendment imposes no additional costs on highway agencies. No compliance date is needed to fully implement the change.

(23) Request VI-36 (Chng.)—Length of Construction Sign

The proposed amendment to Section 6B-36 would have allowed the use of the Length of Construction Sign (G20-1).

Eighteen of the 19 commenters supported the FHWA position. The NCUTCD proposed that the text be revised from mandatory to recommended language.

Upon further evaluation the FHWA has decided to amend Section 6B-36 to a "should" condition rather than a "may" condition as proposed. This will encourage highway agencies to use the G20-1 sign where it is needed to give motorists specific guidance information.

The amendment will impose no additional costs on highway agencies. No compliance date is needed to fully implement the change.

(24) Request VIII-16 (Chng.)—TRACKS OUT OF SERVICE Sign

This amendment revises Sections 8B-1 and 8C-1, adds a new Section (8B-10) and adds the TRACKS OUT OF SERVICE Sign (R8-9). The R8-9 Sign

may be used to indicate to motorists that the tracks are not currently used. The sign is intended for use only when the Railroad Crossing (Crossbuck) Sign (R15-1, 2) and other grade crossing protection devices are removed or covered.

Only one of the 21 commenters opposed this amendment.

Traffic operations should be improved at the sites where this sign is used. This amendment does not impose additional costs. No compliance date is needed to implement this change.

(25) Request VIII-18 (Chng.)—Delete Traffic Signal Preemption Drawing, Figure 8-8

This amendment to Section 8C-6 deletes Figure 8-8.

All 19 commenters concurred with the proposal.

This deletion will impose no additional cost on highway agencies. No compliance date is needed to implement this change.

(26) Request IX-4 (Chng.)—U.S. Bicycle Route Marker (M1-9)

This amendment to Section 9B-20 reverses the location of the symbol and the route number and reduces the size of the numbers of the route number on the M1-9 sign.

All 19 commenters concurred with this proposal.

There will be minimal costs associated with this change. To offset these costs, a compliance date of December 31, 1989, is established.

Discussion of Editorial changes

In accordance with the FHWA procedures published in FHWA Docket 83-18 (48 FR 30145, June 30, 1983) the FHWA invites comments to FHWA Docket 87-8 on the following editorial changes (Requests I-7 and IV-71):

The FHWA is making the following editorial changes to the MUTCD. The changes and their bases are summarized below.

(27) Request I-7 (Chng.)—Adoption Procedures for Symbols on Traffic Control Devices

This amendment to Section 1A-2 requires that all symbols used on or as signs, signals or markings must be developed and adopted in accordance with the procedures set forth in Section 1A-4. The amendment also excludes symbols from the general provisions of Sections 2B-44, Other Regulatory Signs, and 2C-41, Other Warning Signs.

This amendment is consistent with Section 2A-9, Design, the general principle of uniformity which is stressed throughout the MUTCD and the

understanding of those persons who are familiar with the MUTCD and its development.

This revision imposes no additional costs on highway agencies. No compliance date is needed to implement this change.

(28) Request IV-71 (Chng.)—Vehicle Change Interval

The NCUTCD requested specific wording changes to Section 4B-15 to clarify existing language relative to an "all-way red clearance interval".

In particular, paragraph 4 of Section 4B-15 refers to an "all-way red clearance interval". An all-way red is not applicable to certain multi-phase signal operations. For example, when a protected left turn phase operating concurrently with a through phase terminates, the through phase normally remains green, so there could not be an all-way red. Therefore the FHWA is amending the wording of the fourth paragraph from "short all-way red" to "red".

This wording change recognizes certain multi-phase signal operations.

This amendment to the MUTCD provides clarification and imposes no additional costs on highway agencies. No compliance date is needed to implement this change.

Discussion of Actions to be Deferred or Extended

(29) Request VI-29 (Chng.)—Minimum Diameter of Drums

Action on this request is being deferred pending the completion of a research study.

In consideration of the foregoing and under the authority of 23 U.S.C. 109(d), 315, and 402(a), and the delegation of authority in 49 CFR 1.48(b), the Federal Highway Administration hereby adopts the Manual of Uniform Traffic Control Devices as amended herein and amends Part 655 of Title 23 CFR by amending Section 655.601(a) to read as set forth below.

Regulatory Impact

The Federal Highway Administration has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. As stated herein the economic impact of these amendments is so minimal as not to require preparation of a full regulatory evaluation. For the same reasons and under the criteria of the regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a

significant economic impact on a substantial number of small entities.

Since the editorial amendments contained in this document are technical in nature, the FHWA finds good cause to make the editorial amendment final without the opportunity for comment under the Administrative Procedure Act. However, interested parties may comment on the editorial amendments by April 3, 1987 and such comments will be placed in FHWA Docket 87-8 and considered. For the same reasons, opportunity for prior comment is not required under the regulatory policies and procedures of the Department of Transportation.

Incorporation by Reference

The MUTCD has been incorporated by reference in 23 CFR Part 655 under the provisions of 5 U.S.C. 552(a) and 1 CFR Part 51 and approved by the Director of the Federal Register as of April 1, 1986. The MUTCD was last revised on December 12, 1985 (50 FR 50784). The MUTCD citation included in 23 CFR 655 will be revised to reflect the amendments contained in this document.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Signs, Traffic regulations, Incorporation by reference.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: February 27, 1987.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

The FHWA hereby amends Chapter 1 of Title 23, Code of Federal Regulations, by amending Part 655 as set forth below.

PART 655—TRAFFIC OPERATIONS

1. The authority citation for 23 CFR Part 655, Subpart F continues to read as follows:

Authority: 23 U.S.C. sections 109(d), 114(a), 217, 315, 402(a), 23 CFR 1204.4; and 49 CFR 1.48(b).

§ 655.601 [Amended]

2. In § 655.601, paragraph (a) is amended by revising the first sentence to read as follows:

§ 655.601 Purpose.

* * * * *

(a) Manual on Uniform Traffic Control Devices for Streets and Highways, FHWA, 1978, as amended February 1987. * * *

[FR Doc. 87-4767 Filed 3-6-87; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[T.D. ATF-247; Correction]

Commerce in Firearms and Ammunition; Correction

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Temporary rule (Treasury decision); correction.

SUMMARY: This document changes the word "revising" to the word "adding" in paragraph 8 of FR Doc. 87-822, published in the *Federal Register* on January 16, 1987, at 52 FR 2050.

FOR FURTHER INFORMATION CONTACT: Daniel E. Crowley, ATF Specialist, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, (202) 566-7591.

SUPPLEMENTARY INFORMATION:

Paragraph 1. In the left column of page 2050, paragraph 8 should read:

Par. 8 Section 178.99 is amended by adding titles for paragraphs (a), (b) and (c) and by adding paragraphs (d) and (e) to read as follows:

W.T. Drake,
Acting Director.
February 17, 1987.

[FR Doc. 87-4891 Filed 3-6-87; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Permanent Program Amendments From the Commonwealth of Kentucky Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of program amendments

submitted by Kentucky as modifications to the Commonwealth's permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments which were submitted on September 5, 1986, and modified on December 4, 1986, pertain to a bond pool program for Kentucky coal mine operators.

After providing for public comments and conducting a thorough review of the program amendments, the Director has determined that the amendments meet the requirements of SMCRA and the Federal regulations and is approving these amendments. The Federal rules at 30 CFR Part 917 codifying decisions concerning the Kentucky program are being amended to implement these actions.

This final rule is being made effective immediately to expedite the State program amendment process.

EFFECTIVE DATE: March 9, 1987.

FOR FURTHER INFORMATION CONTACT: W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504. Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky State Program

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSMRE. On April 13, 1982, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary of the Interior conditionally approved the State's program. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 *Federal Register* (47 FR 21404-21435).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982 *Federal Register* notice. Subsequent actions concerning the conditions of approval and program amendments are identified in 30 CFR 917.11, 917.15, 917.16 and 917.17.

II. Submission of Program Amendments

On September 5, 1986, Kentucky submitted to OSMRE, pursuant to 30 CFR 732.17, certain amendments to the Kentucky program. The amendments pertained to the establishment and

implementation of a bond pool to supplement reduced performance bonds for surface mining operations. The revisions would complement the provisions of Kentucky Senate Bill No. 130 (codified at KRS 350.700 through 350.755) which was approved by OSMRE on July 18, 1986 (51 FR 26002). The proposed rules also were intended to address the requirement at 30 CFR 917.16(c)(1) that Kentucky, prior to implementation of Senate Bill No. 130, submit and obtain OSMRE approval of regulations to implement the bill. The submission included emergency rules at 405 KAR 10:200E and regular rules at 405 KAR 10:200 which would supersede the emergency rules upon promulgation and approval.

On October 6, 1986, OSMRE announced receipt of the rules and opportunity for public comment and a public hearing in the *Federal Register* (51 FR 35532). The public comment period closed on November 5, 1986. The public hearing scheduled for October 31, 1986, was not held because no one requested an opportunity to testify.

On December 4, 1986, Kentucky submitted modifications to the proposed rules at 405 KAR 10:200. The proposed amendments had completed Kentucky's promulgation process and therefore, would replace and supersede the emergency rules at 405 KAR 10:200E, upon approval.

On December 24, 1986, OSMRE announced in the *Federal Register* a reopening of the comment period to allow for public comment on the modified proposed rules (51 FR 46690). The comment period ended January 8, 1987.

III. Director's Findings

As explained by Kentucky in its submission of the proposed regulations at 405 KAR 10:200, the regulations must be read together with the statutory provisions contained in Senate Bill 130 and codified at KRS 350.700-350.755. Senate Bill 130 was approved by the Director, OSMRE, on July 18, 1986 (51 FR 26002). The regulations complement the statutory provisions and do not duplicate them; therefore, a summary of the statutory provisions is included below.

Senate Bill 130

KRS 350.700 establishes the bond pool fund, to be administratively assigned to the Natural Resources and Environmental Protection Cabinet (NREPC). Fund monies will be collected and placed in an interest-bearing account and used for these purposes only: (1) To reclaim permit areas

covered by the fund in the event of bond forfeiture; (2) to cover administrative costs of the fund; (3) to fund required audits and actuarial studies; and (4) to cover operating and legal expenses of the bond pool commission.

KRS 350.705 provides for the creation of a bond pool commission of seven members. The section addresses the selection of commission members and how long the members will serve. Other topics included in the section are bylaws of the commission, where the commission will reside, when it shall meet, per diem payments to members, conflict of interest requirements and liability of the members.

KRS 350.710 establishes the duties of the bond pool commission to review membership applications and ratings, to notify members of when the tonnage fee is required by KRS 350.725, to revoke or reinstate membership, to employ a certified public accountant (CPA) to audit the bond pool fund annually the first two years and biennially after that, to employ a qualified actuary to perform an actuarial study every three years, to authorize necessary expenditures from the fund and to report yearly to the governor the financial status of the fund.

KRS 350.715 requires the secretary of the NREPC to appoint an administrator of the fund and establishes the duties of the administrator in performing administrative functions necessary to carry out KRS 350.700 to 350.755.

KRS 350.720 establishes the "bond pool." The bond pool allows its members to post a reclamation performance bond which is less than the estimated cost of reclamation, if the member qualifies for participation in the bond pool and pays the required fees to the bond pool's supplemental fund. The bond pool fund would then be used to supplement the reduced operator bond in the event of operator default on reclamation. Subsidence damage is not eligible for coverage by the bond pool fund. Applicants for membership in the bond pool must be in good financial standing as determined by the commission and must qualify for an "A", "B" or "C" rating, based on length of time the applicant has held a permit under the same permittee name, and the type of compliance rating, "excellent" or "acceptable." The permittee has exhibited. The rating method is defined in the regulations at 405 KAR 10:200 Section 7, as approved in this Federal Register notice. Other membership restrictions apply based on ownership and control by, of, or with the applicant.

KRS 350.725 establishes membership fees and per-ton fees to be paid to the fund. Membership fees are \$1000 for "A" rated members, \$2000 for "B" and \$2500

for "C" rated members. Members shall pay 8¢ per ton of coal extracted by surface mining and 1¢ per ton of coal extracted by underground mining.

KRS 350.730 provides that when the fund reaches \$7 million, members who have made 36 or more monthly payments into the fund will be notified that tonnage fees are suspended. Tonnage fees are reinstated when the fund decreases to \$5 million. The section also provides that these minimum and maximum dollar numbers shall be raised under certain circumstances.

KRS 350.735 establishes dollar amounts required for permit-specific bonds. For each acre or fraction thereof in the proposed permit area, a bond of \$500 is required for "A" rated members, \$1000 for "B" rated members and \$2000 for "C" rated members. For each acre of prime farmland, \$1500 additional bond is required.

KRS 350.740 provides that a permit shall not be issued to a fund participant until the permit-specific bond is posted; requires a permit transferee to become a pool member or submit adequate full bond; and, emphasizes that membership in the bond pool shall not relieve the member of compliance with KRS Chapter 350, except for provisions relating to the method of posting bond.

KRS 350.745 covers bond forfeiture and provides that, after permit specific bonds are used, additional money needed to reclaim a default site shall be provided by the fund.

KRS 350.750 covers revocation of membership. Revocation actions will be taken when a member is in arrears in payments for more than 30 days or when a member is issued a cessation order for failure to abate a violation of contemporaneous reclamation requirements or in the case of a pattern of violations. Revocation action may be taken when a member is issued a cessation order for failure to abate a violation other than a contemporaneous reclamation violation.

KRS 350.755 prohibits any person who has not reimbursed the fund for expenditures made as a result of a forfeiture on that person's operation, from obtaining another permit or beginning another operation.

405 KAR 10:200

The Kentucky rules at 405 KAR 10:200 complement the statutory provisions summarized above. The Director's approval is based upon consideration of both statutory and regulatory provisions, taken together.

Section 1 of 405 KAR 10:200 establishes the applicability of the regulations. It emphasizes that the alternative bonding program, known as

the Kentucky Bond Pool, is voluntary, and that the rules in the section apply only to permits or part of permits covered under the program.

Section 2 establishes definitions to apply to bond pool provisions. The section defines "administrator" or "bond pool administrator," "applicant," "bond pool," "commission," "member" and "month of operation" as they apply to the Kentucky Bond Pool.

Section 3, review of decisions, states that there shall be no administrative appeal from a decision of the bond pool commission, but the applicant or member may request a reconsideration within 60 days of notice of the decision. The commission may grant or deny the request.

Section 4 of 405 KAR 10:200 establishes general requirements for membership applications. Persons desiring membership shall submit an application with any required financial statements prepared by a certified public accountant, and a \$100 application fee.

Section 5 establishes procedures for review of applications and for notifying applicants of completeness of the application and of the decision to accept or deny the application.

Section 6, Determination of Financial Standing, provides for confidentiality of information in the applicant's financial statements, and provides that the financial standing of the applicant shall be determined based on financial information required in the application and other information available to the commission and NREPC. The rule provides that the commission may consider but shall not be limited to, certain listed financial ratios and related financial information in making the determination of the applicant's financial standing.

Section 7 of 405 KAR 10:200 covers determination of the applicant's reclamation compliance record. Under subsection 1, the applicant shall be deemed to have an excellent compliance record if the applicant and persons owning or controlling, owned or controlled by, or under common ownership or control with, the applicant meet the required criteria. These are that the applicant (and other listed persons): has never forfeited a bond or avoided bond forfeiture by completion of reclamation work by a surety, under KRS Chapter 350; has never been determined to have demonstrated a pattern of willful violations; has not been issued a failure-to-abate cessation order or imminent harm or danger cessation order in the most recent 36 months of operation; has not committed

a violation of contemporaneous reclamation requirements in the most recent 36 months of operation; has not committed more than three violations on any permit in any twelve-month period of the most recent 36 months, except that the bond pool commission may exclude, for good cause, the twelve-month period on one permit during which the largest number of violations occurred; and has not had civil penalties remaining unpaid more than 30 days after due, within the most recent 36 months of operation. Also, the commission may take into account the applicant's performance in other States and on Federal and Indian lands, where this information is available. Subsection 2 establishes similar but slightly more lenient criteria for an "acceptable" compliance record. The criteria are that the applicant (or other person): has never forfeited a bond under KRS Chapter 350 or avoided forfeiture because the surety performed reclamation; has never been determined to have demonstrated a pattern of willful violations; has not been issued a failure-to-abate cessation order in the most recent 36 months of operation; has not been issued more than one imminent harm or danger cessation order or committed more than one violation of contemporaneous reclamation requirements in the most recent 36 months; has not committed more than eight violations on any permit in any twelve-month period of the most recent 36 months, except that the commission may exclude, for good cause, the twelve-month period during which the largest number of violations occurred; and has not had civil penalties remaining unpaid more than 90 days after due in the most recent 36 months of operation. Performance in other States and on Federal and Indian lands may be considered.

Section 8 covers acceptance of permit areas into the bond pool. The bond pool commission will identify which permits or portions thereof, have been accepted for coverage under the bond pool. Eligible portions of all permits issued to a member after the date of membership shall be covered by the bond pool. For existing permits, undisturbed portions shall be covered; disturbed portions may be covered if coal removal has not been substantially completed, as determined by the commission. Subsection 4 establishes detailed requirements and procedures for bringing eligible existing permit areas into the bond pool. The bond pool member must submit maps identifying disturbed portions to be covered by conventional bonding, and undisturbed portions to be covered by

the bond pool. The NREPC will verify that bond pool increments have not been disturbed before their transition to the bond pool.

Section 9 establishes requirements for production records, reporting, and payment of fees. This section provides that authorized representatives of the commission and (bond pool) administrator shall have access to all permit areas for purposes of determining compliance with the section. The section specifies books and records to be kept and made available to the authorized representatives and that members shall retain books and records for 6 years. The section establishes the authority of authorized representatives to examine records of other parties involved in the sale or transfer of coal by or to the bond pool number. Determination of fees and coal weights are also covered. Subsection 4 specifies how members shall report coal tonnage and shall pay per-ton fees. Subsection 5 provides that the administrator shall notify members of underpayment or overpayment of fees.

There is no counterpart in the Federal law or rules which establishes a bond fund system such as the one established in KRS 350.700 through 350.755 and 405 KAR 10:200. However, section 509(c) of SMCRA provides for alternative bonding systems stating that "the Secretary may approve as part of a State or Federal program an alternative system that will achieve the objectives and purposes of the bonding program pursuant to this section." The Federal rules at 30 CFR 800.11(e) provide that OSMRE may approve an alternative bonding system if the system: assures that the regulatory authority will have available sufficient money to complete the reclamation plan for any areas in default at any time; and, provides an economic incentive for the permittee to comply with all reclamation provisions.

The Director finds that the Kentucky system achieves the objectives and purposes of the bonding program in section 509 of SMCRA in that it provides for funding in an amount sufficient to assure the completion of the reclamation plan and it does not alter the approved Kentucky requirements for liability under the bond for the mining operation and the operator's liability period. As required by 30 CFR 800.11(e), the Kentucky system provides an economic incentive to reclaim in KRS 350.755 which provides that no person shall be eligible to receive another permit or begin another operation until the person has reimbursed the fund for any money from the bond pool that was used to reclaim that person's operation. There is

also an incentive to reclaim to obtain release of the permit-specific bond.

The Director finds that Kentucky's rules at 405 KAR 10:200 satisfactorily supplement the statutory provisions at KRS 350.700-350.755. The rules contain provisions to further define and clarify the statutory provisions, including the A, B, C rating system by which it will be determined which applicants may participate in the system and at what rates these applicants will pay into the system.

The approval notice of Kentucky's Senate Bill 130 published in the Federal Register on July 18, 1986 (51 FR 26002), details the Director's reasons for finding the Kentucky bond pool system consistent with the requirements of section 509(c) of SMCRA and 30 CFR 800.11(e). The Director found that the bill provided adequate funding levels and fee accrual rates to supplement operator bonds to the extent necessary "at least until such time as there is sufficient data available to determine the adequacy of the program." The Director noted in his decision that, if 50% of Kentucky's coal operators participated in the bond pool, total first year revenues could exceed \$6 million, and revenues could reach in excess of \$7 million in the second year of operation. The Director further assumed that forfeiture rates would be low for at least the first year, giving the fund a chance to accrue revenues. For a more detailed discussion see the Findings section of the July 18, 1986 approval notice in the Federal Register, under "Senate Bill 130."

The Director finds that Kentucky's rules at 405 KAR 10:200 which supplement the statutory provisions contained in Senate Bill 130, strengthen the bond pool system by further minimizing risks of forfeiture under the bond pool system. This is accomplished by the addition of specific criteria at 405 KAR 10:200 section 7, by which an operator can qualify for an "acceptable" or "excellent" rating. Operators qualifying for an "A" rating as described in KRS 350.720(7) would carry little risk of a forfeiture action becoming necessary on their sites. Even operators qualifying for "B" or "C" rating would have been in business for at least 3 years with no record of forfeitures, no pattern of willful violations, and no more than one contemporaneous reclamation violation in the most recent 36 months. These would indicate a low risk of forfeiture for these members also.

The Director finds that the rules when reviewed together with the statutory provisions, provide a sound alternative bonding system that, in accordance with

section 509(c) of SMCRA, achieves the objectives and purposes of the bonding program pursuant to section 509. The Director finds that the Kentucky system is consistent with 30 CFR 800.11(e) which further requires that the alternative system provide a substantial economic incentive for the permittee to comply with reclamation provisions. As stated in the Federal Register notice of approval of the statutory provisions in Kentucky Senate Bill 130, the Director will monitor the bond pool fund in the oversight evaluation process.

In order to aid the Director in his oversight responsibilities, OSMRE will require Kentucky to supply promptly, to OSMRE, copies of all audits and actuarial studies performed under the requirements of KRS 350.700 through .755 and implementing regulations. If it is found that the fund is inadequate to supplement member bonds in the event of member default on reclamation obligations, or that the fund does not replenish itself at a sufficient rate to avoid unreasonable delays in reclamation of forfeited sites, the Director may require an adjustment in the fund limits and/or fees collected for the fund.

The Director further finds that Kentucky has satisfactorily addressed the required amendment at 30 CFR 917.16(c)(1), that Kentucky submit and receive approval of implementing regulations, before initiating the Kentucky Bond Pool provisions contained in Senate Bill 130.

IV. Public Comments

In response to the Director's request for public comments, comments were submitted on October 16, 1986, and January 9, 1987, by Mr. Thomas J. FitzGerald on behalf of the Kentucky Resources Council, Inc. (Council).

Mr. FitzGerald said that the Council believes that the concept of an actuarially-based alternative bonding system is, under certain conditions, a sound concept but the Council has some concerns with certain aspects of the current Kentucky bond pool.

The commenter expressed concern with the Tillinghast actuarial study used by Kentucky in determining fund rates, saying that the costs of reclamation used in the study were low and that bond forfeiture rates used were inaccurate. The commenter said that an alternative bonding system under section 509(c) of SMCRA must achieve the intent and purpose of section 509 of SMCRA and must therefore provide bond amounts sufficient to assure completion of the reclamation plan. The commenter said that since the fees provided for in the bond pool provisions

were based on faulty assumptions, fund amounts would be insufficient.

The Director, in deciding to approve the Kentucky bond pool, did not depend on information contained in the Tillinghast study. For the reasons stated in the Findings above, the Director has determined that the Kentucky Bond Pool program will provide a sound alternative bonding system. The Kentucky bond pool system screens out potential high-risk members and will allow funds to accrue at a rate and to an amount that should provide adequate funds to supplement reduced operator bonds. The Director will monitor the program during the oversight evaluation process.

The commenter wanted reassurance that the statutory requirements for five years of operation for an "A" or "B" rating and three years of operation for a "C" rating, applied even though they are not reiterated in the rule. Kentucky specified in its cover letters accompanying the original and modified versions of the rules, that the statutory and regulatory provisions must be read together as complementary provisions. Therefore, repetition of these statutory requirements in the regulations is unnecessary, and the statutory provisions will apply as well as regulatory provisions.

The commenter stated that the determination of financial standing (405 KAR 10:200, section 6) should require reporting of pending claims or litigation, foreclosures, bankruptcies and contingent liabilities. The Director disagrees that these specific requirements must be contained in the rules, since 405 KAR 10:200 section 4 provides that financial statements required with the application be prepared by a certified public accountant. The statements would therefore normally consider all pertinent financial data.

The commenter suggested that the September 5, 1986, proposed rule at 405 KAR 10:200 section 7(1)(g) be revised so that exclusion of a twelve month period from the applicant's record of violations would be at the discretion of the regulatory authority. The revised Kentucky submission provides that such an exclusion would be at the discretion of the regulatory authority.

The commenter felt that the rules should require a "permit walk" to delineate areas that will be covered by the bond pool and identify those to remain covered by existing bonds. Kentucky's revised rules at 405 KAR 10:200 section 8 require maps designating disturbed and undisturbed areas for purposes of bond pool coverage. The rules provide detailed

requirements for determining bond pool coverage and for transition of existing permitted areas into the bond pool. Bond pool members must submit maps identifying which portions of the permit area will be covered by the pool. The NREPC will verify that bond pool increments have not been disturbed before their transition to the bond pool. The Director does not agree that a "permit walk" must be required in regulations.

The commenter expressed concern with the reporting and payment provisions in section 9 for fees on extracted coal. After Kentucky submitted the revised rules, the commenter indicated that his concern had been addressed.

The commenter said that the bond pool cannot be approved with regard to underground mining operations unless Kentucky makes alternative provision for requiring a performance bond for subsidence damage. The commenter stated that Kentucky bond pool program excludes subsidence impacts from coverage by the pool. The commenter is referring to KRS 350.720 section (6) which states that "[t]he bond pool fund shall not assume any part of a member's responsibility for damage due to subsidence which occurs in connection with underground mining or auger mining." Since this language does not release the operator from his responsibility for subsidence impacts, the Kentucky bond pool need not cover subsidence impacts. Kentucky's approved program provides for coverage of subsidence impacts and the bond pool program does not interfere with that coverage.

V. Director's Decision

The Director, based on the above findings, is approving the Kentucky program amendments contained in 405 KAR 10:200 submitted September 5, 1986, as modified on December 4, 1986. The Federal rules at 30 CFR Part 917 are being amended to implement the Director's decision.

Further, the Director finds that Kentucky has satisfactorily addressed the required amendment at 30 CFR 917.16(c)(1), that Kentucky submit and receive approval of implementing regulations before implementing statutory amendments contained in Senate Bill 130, and is removing that required amendment.

VI. Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C.

1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act*: On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act*: This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: March 2, 1987.

James W. Workman,
Deputy Director, Operations and Technical Services.

PART 917—KENTUCKY

30 CFR Part 917 is amended as follows:

1. The authority citation for Part 917 continues to read as follows:

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 917.15 is amended by adding a new paragraph (w) as follows:

§ 917.15 Approval of regulatory program amendments.

(w) The following amendments to the Kentucky Administrative Regulations (KAR) submitted to OSMRE on September 5, 1986, as modified on December 4, 1986, are approved effective March 9, 1987: amendments to the Kentucky Administrative Regulations to add 405 KAR 10:200, concerning the Kentucky bond pool.

3. 30 CFR 917.16 is amended by removing and reserving paragraph (c)(1) as follows:

§ 917.16 Required program amendments.

(c) * * *

(1) [Reserved]

[FR Doc. 87-4893 Filed 3-6-87; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; USS LAWRENCE

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS LAWRENCE (DDG-4) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval guided missile destroyer. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: February 25, 1987.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS LAWRENCE (DDG-4) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 2(a)(i), pertaining to the placement of the forward masthead light, without interfering with its special function as a naval guided missile destroyer. The Secretary of the Navy has also certified that the aforementioned light is located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS LAWRENCE (DDG-4) is a member of the DDG-2 class of vessels

for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to this vessel.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table One of § 706.2 is amended by adding the following Navy ship to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Distance in meters of forward masthead light below minimum required height. Annex I, section 2(a)(i)
USS LAWRENCE.....	DDG-4	2.45

Dated: February 25, 1987.

Approved:

John Lehman,

Secretary of the Navy.

[FR Doc. 87-4877 Filed 3-6-87; 8:45 am]

BILLING CODE 3810-AE-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 21, 74, 78, and 94

[General Docket 82-334]

Establishment of a Spectrum Utilization Policy for the Fixed and Mobile Services' Use of Certain Bands Between 947 MHz and 40 GHz.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action disposes of issues raised in the *Second Notice of Proposed Rule Making (2nd NPRM)* in General Docket 82-334, 50 FR 51420 (December 17, 1985), and terminates the proceeding. The *2nd NPRM* addressed expanded eligibility, revised channeling plans, minimum path length standards and a number of other issues for certain microwave frequency bands. The intended effect of this action is to improve utilization of certain fixed and mobile bands between 947 MHz and 40 GHz.

EFFECTIVE DATE: April 1, 1987.

ADDRESS: Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Donald Draper Campbell, Office of Engineering and Technology, Spectrum Engineering Division, Frequency Allocations Branch, tel: (202) 653-8113.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Report and Order* in General Docket 82-334, FCC 86-523, Adopted November 25, 1986, and Released February 23, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Summary of Third Report and Order

1. In this *Third Report and Order (3rd R&O)*, we are considering issues raised in the *Second Notice of Proposed Rule Making (2nd NPRM)* in General Docket 82-334, 50 FR 51420 (December 17, 1985), which proposed to relax eligibility restrictions in the following bands: 1850-1990 MHz (1.8 GHz), 1990-2110 MHz (1.9 GHz), 6425-6525 MHz (6.4 GHz), 6525-6875 MHz (6.5 GHz), and 6875-7125 MHz (6.8 GHz). The *2nd NPRM* also addressed several technical issues including channeling plan adjustments, minimum path length requirements and antenna pointing restrictions.

1.8 and 6.5 GHz Bands

2. Eligibility. The 1.8 and 6.5 GHz bands are allocated domestically to the fixed service on a primary basis. Pursuant to § 94.5, any person who can establish eligibility under Parts 81, 87, or 90 is eligible for licensing under Part 94. However, § 94.61, in footnote 15, prohibits: (a) Use of the 1.8 and 6.5 GHz

bands by persons whose sole eligibility is established under § 90.75(a)(1), operation of a commercial activity, and (b) persons seeking to establish systems solely to provide private carrier communications service to other persons who are eligible under Part 94. In the *2nd NPRM* we proposed to remove the limitations imposed by footnote 15 on the use of the 1.8 and 6.5 GHz bands.

3. The current users oppose the proposal to expand eligibility, stating that these two bands are crowded and cannot support other users. Several microwave equipment manufacturers favor expanded eligibility for these two bands, stating that those parties currently excluded from the two bands do not have eligibility in any bands suitable for long-haul voice and data circuits requiring wide bandwidths. The only wideband channels available to them are in bands above 12.2 GHz, which are more suitable for short distances. They also argue that there is essentially no justification for the current discrimination by type of user.

4. We find no reason to continue the current restrictions on eligibility in the 1.8 and 6.5 GHz bands. We believe the proposed types of uses will be compatible. Further, by expanding eligibility, we believe that the needs of many users (such as retail stores, financial institutions, hotels, service businesses, etc.) for long-haul voice and data circuits would be better served. Accordingly, we find that it is in the public interest to expand eligibility for licensing in the 1.8 and 6.5 GHz bands to include any person engaged in a commercial activity and persons seeking to establish systems solely to provide private carrier communications service to other persons eligible under Part 94.

5. Guard Bands. In the *2nd NPRM* we proposed to create five 1 MHz channel pairs from the guard bands 6525-6530 MHz and 6870-6875 MHz for fixed use under Part 94. These frequency bands are now unused. All commenters support the use of the guard bands. However, EIA and several microwave equipment manufacturers suggested an alternative channeling plan to create six 800 kHz channel pairs and three 1600 kHz channel pairs. They state that this will facilitate interconnection with other private microwave links in the 2130-2150 MHz and 2180-2200 MHz bands. Therefore, we are making the guard bands available for use under Part 94 and are adopting the alternative channeling plan proposed by EIA.

1.9 and 6.8 GHz Bands

6. Eligibility. The 1.9 and 6.8 GHz bands are allocated domestically to the

fixed and mobile services on a primary basis. Service rules for the fixed and mobile allocations are contained in Subpart F of Part 74. In the *2nd NPRM* we proposed to make cable system operators and network-entities (cable and broadcast) eligible for licensing in these bands for transmission of television signals on a coequal basis using mobile stations.

7. Television broadcast interests oppose extending eligibility in these bands to non-broadcasters. They state that the bands are heavily used and point out that the microwave links in these bands form the backbone of their video delivery systems. Broadcasters state that, under the Commission's Rules, they must satisfy public service requirements and their ability to do so will be impaired if use of these bands is increased. They state further that cable operators do not have the same pressures to provide high quality service and, therefore, will not exercise the same degree of care to coordinate their operations. Several broadcasters state that cable systems already have sufficient frequencies in other bands and, therefore, should not be given access to the 1.9 and 6.8 GHz bands.

8. Cable system operators strongly support the proposal stating that they need to provide television relay services similar to broadcasters and that there is no reason why they should be treated differently. They point out that, while broadcasters have great flexibility to use a number of frequency bands for mobile operation, cable operators have only spectrum above 12.7 GHz. Cable operators maintain that in many situations spectrum above 12.2 GHz is inadequate for such operations as electronic news gathering due to poor propagation characteristics. Cable system operators claim that, because of this situation, their ability to cover local news and sports events has been greatly impaired, putting them at a disadvantage with respect to broadcasters.

9. Networks were divided in their reaction to the proposals. CBS, Inc. and National Broadcasting Company, Inc. oppose the proposal for the same reasons as individual broadcasters. Turner Broadcasting System, Inc. (the owner of Cable News Network and Headline News) and Christian Broadcasting Network support the proposed eligibility changes for the same reasons as cable systems operators.

10. Cable systems operators have demonstrated that they need to use these bands in much the same way as broadcasters and that existing

provisions are inadequate to satisfy these needs. We find no merit to the broadcasters' argument that cable systems operators will fail to act diligently in coordinating operations with other users. To the contrary, we feel that broadcasters and cable operators will find it to be in their mutual best interest to minimize harmful interference. We note that networks opposed to the proposal are already using the 1.9 and 6.8 GHz bands by the way of television broadcast auxiliary stations licensed to an owned or affiliated broadcasting station. At the same time, these networks may be used to transmit material to be used by cable television systems, educational institutions, and others who are not broadcasters. We see no reason to maintain the distinction between those networks who can use television broadcast auxiliary stations because of relationships with a broadcasting station and those who cannot. Therefore, we find it in the public interest to expand the eligibility requirements for licensing the 1.9 and 6.8 GHz bands to include cable system operators and network-entities for the transmission of television program materials.

11. Currently common carriers can provide service to broadcasters in the 1.9 and 6.8 GHz bands. In as much as we are opening up these bands to broadcast and cable network-entities and cable systems for mobile only operations and in order to be consistent in our policy, we are permitting common carriers to provide mobile service in these bands to those new eligibles.

12. Several Instructional Television Fixed Service (ITFS) licensees state that they also have a need to use these bands for the distribution of educational television programs to ITFS stations and networks just like broadcasters use STL and long haul inter-city relays. They note that many ITFS licensees have extensive networks requiring FM-television interconnection facilities to maintain high quality television signals. The arguments of the ITFS licensees raise additional issues beyond the scope of our proposal. Therefore, we cannot consider the arguments of the ITFS licensees at this time.

13. Fixed/Mobile Allocation Status. In the 2nd NPRM, we proposed to reallocate the 1.9 GHz band to make the mobile service primary and the fixed service secondary and to reallocate the 6.8 GHz band to make the fixed service primary and the mobile service secondary. This was intended to ease the frequency coordination between fixed and mobile operations. In the

comments, broadcasters generally oppose the proposed change, stating that the present arrangement has proven to be satisfactory. Cable interests and EIA generally concurred with the reallocation proposal. It appears that the existing allocation status has been workable. We anticipate that the current allocation status will continue to be satisfactory, assuming the new eligibles for mobile television pick-up follow the coordination procedures that will be developed in MM Docket 86-405. Accordingly, we have decided not to make any changes in the fixed/mobile allocation status of the 1.9 and 6.8 GHz bands at this time.

6.4 GHz Band

14 Eligibility. The 6.4 GHz band is allocated domestically on a coequal basis to the fixed-satellite service (Earth-to-space) and the mobile service. Common carrier use of the mobile allocation is for the Local Television Transmission Service (LTTS). Broadcast use of this mobile allocation is secondary to the common carrier use. In the 2nd NPRM, we proposed that the rules governing the use of this band be amended to permit all parties who are eligible for licensing under Parts 21, 74, 78, and 94 to be licensed for operation in the 6.4 GHz band only for transmission of television signals by mobile stations. Use of this band for direct delivery of television programs to the general public or for multi-channel cable distribution would not be permitted.

15. LTTS operators oppose the proposal to expand eligibility to other users on a primary basis. They claim that the changes will seriously jeopardize the ability of common carriers to satisfy their customers' demands for LTTS. The LTTS operators state that they increasingly rely on use of the 6.4 GHz band to provide service. While the 11.7-12.2 GHz (11.7 GHz) band is also available for LTTS, it is on a secondary basis to the fixed-satellite service (space-to-Earth). With the growing deployment of Earth stations, the 11.7 GHz band is becoming less useful for LTTS, according to the LTTS operators.

16. The proposal to expand eligibility in the 6.4 GHz band is generally supported by the broadcasters and cable operators. They state that the common carriers do not make heavy use of the band and that in many major urban markets there is sufficient demand for mobile TV pick-up that the 1.9 and 6.8 GHz bands are inadequate. Use of the additional band would provide flexibility in establishing mobile links to help relieve congestion in the 1.9 and 6.8

GHz bands, according to the broadcasters.

17. The proposal to expand the eligibility in the 6.4 GHz band is generally supported by the broadcasters, cable operators and the microwave radio equipment manufacturers. They state that in many major urban markets there is sufficient demand for mobile television pick-up that the 1.9 and 6.8 GHz bands are inadequate; and that the common carriers do not make heavy use of the band. They contend that the 6.4 GHz can support the additional usage.

18. We believe that there is merit in expanding eligibility in the 6.4 GHz band as proposed. Common carriers have not demonstrated why they should be accorded a higher allocation status than others wishing to establish similar operations in the 6.4 GHz band. Allowing broadcasters, networks, cable operators, and private entities to have access to the 6.4 GHz band on a primary basis will provide added flexibility in establishing microwave links for mobile television pick-up which is needed in some urban areas where the 1.9 and 6.8 GHz bands are heavily utilized. Therefore, we find it in the public interest to amend the rules to permit access to the 6.4 GHz band for mobile television pick-up for all eligibles under Parts 21, 74, 78 and 94 on a primary basis.

19. Channeling Plan. We proposed several alternatives to revise the channeling plan in the 6.4 GHz band to accommodate new video transmission requirements and relieve congestion in the top television market areas. Part 21 currently does not impose a channeling plan on the 6.4 GHz band, but does limit the maximum channel bandwidth to 30 MHz. Part 74 does impose a channeling plan with four 25 MHz channels. FM-television transmission is used in the 25 MHz channels. We proposed an alternative channeling plan that would overlay the existing 25 MHz channels with 8 MHz channels to support AM-television transmission. As a further alternative, we requested comment on the concept of dividing the band into 1 MHz segments and permitting the stacking of any number of these segments to arrive at a channel width appropriate for the specific application.

20. The commenters generally support the additional channeling plan; however, EIA proposes modifications to make the plan more workable. The commenters oppose the alternative approach of dividing the band into 1 MHz stackable segments. They state that a formal channel plan must be implemented so as to minimize the complexity and administrative burden of frequency

coordination. We find merit in the EIA proposed channel plan. It allows for great flexibility for the development of the band while maintaining electromagnetic compatibility insofar as possible. Therefore, we are amending our rules as suggested by EIA.

21. Frequency Coordination. In the 2nd NPRM, we proposed to require prior frequency coordination for all new eligibles in accordance with the current procedure in § 21.100(d). LTTS operators state that, although they currently satisfy the intent of § 21.100(d), the rule is not practical as written. It was not our intent in this proceeding to consider significant changes to the present frequency coordination procedures. The information submitted by the commenters is insufficient to determine at this time how the rules might be modified. Thus we are requiring compliance with the provisions of § 21.100(d).

22. Alternative Allocation. An alternative to the Commission's proposals for the 6.4 and 6.5 GHz bands is proposed by the Times Mirror Microwave Communications Company (TMMCC). TMMCC proposes that the 6.4 GHz band as well as the lower 50 MHz of the 6.5 GHz band be reallocated to the fixed service for expansion of frequencies available for common carrier inter-exchange fixed service. The arguments of TMMCC and the inter-exchange common carriers are beyond the scope of our proposal. We proposed simply to expand eligibility in the 6.4 GHz band, currently allocated for mobile service; the TMMCC request involves a complete reallocation of the band to the fixed service. The potential impact on current users is well beyond that contemplated in the 2nd NPRM. Accordingly, the alternative allocation requested by TMMCC is rejected.

Minimum Path Length

23. In the 2nd NPRM, we proposed a minimum path length requirement for fixed service operations in order to discourage the use of lower frequency bands for short-haul paths. Some private users oppose a minimum path length requirement. They claim that such a requirement would have serious, punitive effects and therefore, they urge the Commission to specify minimum path length guidelines rather than to adopt rules. Broadcasters were divided on the issue of minimum path length requirements. Cable interests, EIA and the microwave equipment manufacturers support the minimum path length requirement as a means of promoting efficient spectrum utilization. EIA pointed out certain known propagation anomalies that could make

a hard and fast rule unworkable and suggested an alternate solution in which low power operation could be used in the lower frequency bands, in specific cases according to rule and not waiver, to accommodate foreseeable system design problems. We believe that the goal of spectrum efficiency generally indicates the use of higher frequency bands for short paths. Therefore, we are adopting minimum path length requirements modified along the lines suggested by EIA.

Protection of the Geostationary Orbit

24. In the 2nd NPRM, we noted that the Commission is obliged to make Rules and Regulations that are consistent with the ITU *Radio Regulations*. Therefore, we took the opportunity to propose rules more fully implementing the requirements of Article 27 of the *Radio Regulations*. Article 27 procedures apply to assignments in frequency bands allocated on a primary basis to the fixed-satellite (Earth-to-space) service and the fixed and mobile services. They are intended to allow terrestrial stations to share fixed-satellite service uplink bands. In the comments, AT&T points out the impracticality of applying antenna pointing restrictions to mobile stations. AT&T also urges that our rules align more closely with the *Radio Regulations* than proposed in the 2nd NPRM. No other parties commented on this matter.

25. We agree with AT&T that antenna pointing restrictions for mobile stations are impractical. At the same time, we must point out that the EIRP limits in our rules for mobile stations are below the threshold where antenna pointing requirements take effect. We agree with AT&T that the rules should be aligned more closely with the *Radio Regulations* and, therefore, we are doing so today. Accordingly, we are adopting antenna pointing and EIRP limitations for terrestrial stations sharing fixed-satellite service uplink bands consistent with Article 27 of the *Radio Regulations*.

Regulatory Flexibility Analysis

26. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

Paperwork Reduction Act Statement

27. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information, collection, and/or

record keeping, labelling, disclosure, or record retention requirements, and will not increase or decrease burden hours imposed on the public.

List of Subjects

47 CFR Part 2

Allocations.

47 CFR Part 21

Communication common carriers, Point-to-point microwave, transmission.

47 CFR Parts 74, 78, 94 and 95

Point-to-point microwave.

Ordering Clause

28. Accordingly, It Is Ordered, That pursuant to the authority of 47 U.S.C. sections 4(i), 301, and 303(r), that Parts 2, 21, 74, 78, and 94 of Chapter I of Title 47 of the Code of Federal Regulations are Amended as follows. These amendments become effective April 1, 1987.

29. It Is Further Ordered, That this proceeding IS TERMINATED.

Rule Changes

Chapter I, Parts 2, 21, 74, 78 and 94 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 2—FREQUENCY ALLOCATION AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

30. The authority citation for Part 2 continues to read:

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

31. Section 2.106 is amended by revising columns (5) and (6) for 1990–2200 MHz, 6425–6525 MHz, 6875–7075 MHz, and 7075–7125 MHz, and removing note NG122 as follows:

§ 2.106 Table of frequency allocations.

Non-Government	
Allocation MHz	Rule Part(s)
(5)	(6)
...	
1990–2100 Fixed MOBILE	AUXILIARY BROAD- CAST (74) CABLE TELEVI- SION (78) DOMESTIC PUBLIC FIXED (21)

—Continued

Non-Government	
Allocation MHz (5)	Rule Part(s) (6)
US90 US111 US219 US222 NG23 NG118	
...	
6425-6525 FIXED-SATELLITE (Earth-to-space)	AUXILIARY BROAD- CAST (74) CABLE TELEVI- SION (78) DOMESTIC PUBLIC FIXED (21) PRIVATE OPER- ATIONAL- FIXED MICRO- WAVE (94)
MOBILE 791 809	
...	
6875-7075 FIXED FIXED-SATELLITE (Earth-to-space)	AUXILIARY BROAD- CAST (74) CABLE TELEVI- SION (78) DOMESTIC PUBLIC FIXED (21)
MOBILE 809 NG118	
...	
7075-7125 FIXED MOBILE	AUXILIARY BROAD- CAST (74) CABLE TELEVI- SION (78) DOMESTIC PUBLIC FIXED (21)
809-NG118	

**PART 21—DOMESTIC PUBLIC FIXED
RADIO SERVICES (OTHER THAN
MARITIME MOBILE).**32. The authority citation for Part 21
continues to read:Authority: 47 U.S.C. 154, 303, unless
otherwise noted.

(b) * * *

33. Section 21.107 is amended by
revising the table and notes in
paragraph (b) as follows:**§ 21.107 Transmitter power.**

* * * * *

Frequency Band (MHz)	Maximum Allowable Transmitter Power		Maximum Allowable EIRP	
	Fixed(W)	Mobile(W)	Fixed (dBW)	Mobile(dBW)
Below 30.....	50.0	50.0		
30 to 50.....	350.0	350.0		
50 to 76.....	50.0	50.0		
76 to 512.....	250.0	³ 250.0		
512 to 2,110.....	20.0	20.0		
2,110 to 2,130.....	20.0			
2,150 to 2,160.....	¹ 20.0		+ 45	
2,160 to 2,180.....	¹ 20.0			
2,500 to 2,686.....	¹ 10.0			
2,686 to 2,690.....	0.25			
3,700 to 4,200.....	20.0			
5,925 to 6,425.....	20.0		+ 55	
6,425 to 6,525.....		20.0		+ 35
10,550 to 10,565.....	10.0			
10,615 to 10,630.....	10.0		⁴	
10,700 to 11,200.....	10.0			
12,200 to 13,250.....	10.0	10.0		
17,700 to 18,600.....	10.0		+ 55	
18,600 to 18,800.....	² 10.0		+ 35	

* * * * *

Frequency Band (MHz)	Maximum Allowable Transmitter Power		Maximum Allowable EIRP	
	Fixed(W)	Mobile(W)	Fixed (dBW)	Mobile(dBW)
18,800 to 19,700	10.0		+55	
21,200 to 23,600	10.0		+50	
27,500 to 29,500	10.0		+55	
31,000 to 31,300	0.05	0.05		
38,600 to 40,000	10.0	1.5	+50	

¹In the bands 2, 150-2, 162 and 2,500-2,690 MHz, when used for the multipoint distribution service, up to 100 watts may be authorized pursuant to § 21.904.

²The power delivered to the antenna is limited to -3 dBW.

³Transmitter rated power output is limited to a maximum of 25 watts of frequencies in the bands 454.6625-445.0000 MHz and 459.6625-460.0000MHz.

⁴The EIRP of stations in the 10,600-10,680 MHz band must not exceed +40 dBW.

34. Section 21.108 is amended by revising paragraph (e) as follows:

§ 21.108 Antennas.

(e) These limitations are necessary to minimize the probability of harmful interference to reception in the bands 5925-6525 MHz on board geostationary space stations in the fixed-satellite service (Part 25).

(1) 5925 to 6525 MHz. No directional transmitting antenna utilized by a fixed station operating in these bands shall be aimed within 2 degrees of the geostationary-satellite orbit, taking into account atmospheric refraction. However, exception may be made in unusual circumstances upon a showing that there is no reasonable alternative to the transmission path proposed. If there is no evidence that such exception would cause possible harmful interference to an authorized satellite system, said transmission path may be authorized on waiver basis where the maximum value of the equivalent isotropically radiated power (EIRP) does not exceed:

(i) +47 dBW for any antenna beam directed within 0.5 degrees of the stationary satellite orbit or

(ii) +47 to +55 dBW, on a linear decibel scale (8 dB per degree) for any antenna beam directed between 0.5 degrees and 1.5 degrees of the stationary orbit.

(2) Methods for calculating the azimuths to be avoided may be found in: CCIR Report No. 393 (Green Books), New Delhi, 1970; in "Radio-Relay Antenna Pointing for controlled Interference With Geostationary-Satellites" by C. W. Lundgren and A. S. May, *Bell System Technical Journal*, Vol. 48, No. 10, pp. 3387-3422, December 1969; and in "Geostationary Orbit Avoidance Computer Program" by Richard G. Gould, Common Carrier Bureau Report CC-7201, FCC, Washington, DC, 1972. This latter report

is available through the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22151, in printed form (PB-211 500) or source card deck (PB-211 501).

35. Section 21.801 is amended by revising the frequency bands for 6425-6525 MHz in paragraph (a), revising paragraph (b) and adding a new paragraph (g) as follows:

§ 21.801 Frequencies.

(a) ***
6,425-6,525 MHz ^{6 7}

(b) Communications common carriers in the Local Television Transmission Service may be assigned frequencies listed in §§ 74.602(a), 78.18(a)(7) and 78.18(a)(8) to provide service to television broadcast stations, television broadcast network-entities, cable system operators and cable network-entities. Frequency availability is subject to the provisions of § 74.604 and the use of the facility is limited to the permissible uses described in §§ 74.631 and 78.11. Operations on these frequencies are subject to the technical provisions of Part 74, Subpart F, and Part 78, Subpart D of this chapter.

(g) 6425 to 6525 MHz—*Mobile Only*. Paired and un-paired operations permitted. Use of this spectrum for direct delivery of video programs to the general public or for multi-channel cable distribution is not permitted. This band is co-equally shared with mobile stations licensed pursuant to Parts 74, 78 and 94 of the Commission's Rules. The following channel plans apply.

(1) 1 MHz maximum authorized bandwidth channels.

⁶ This band is co-equally shared with mobile stations licensed pursuant to Parts 74, 78 and 94 of the Commission's rules.

⁷ Use of this spectrum for direct delivery of video programs to the general public or multi-channel cable distribution is not permitted.

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
6425.5	6475.5
6450.5	6500.5

(2) 8 MHz maximum authorized bandwidth channels.

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
6430.0	6480.0
6438.0	6488.0
6446.0	6506.0
6455.0	6505.0
6463.0	6513.0
6471.0	6521.0

(3) 25 MHz maximum authorized bandwidth channels.

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
6437.5	6487.5
6462.5	6512.5

36. Section 21.804 is amended by revising the table in paragraph (d) as follows:

§ 21.804 Bandwidth and emission limitations.

(d) ***

Frequency band (MHz)	Maximum authorized bandwidth (MHz)
3,700 to 4,200	20
5,925 to 6,425	30
6,425 to 6,525	25
10,700 to 12,200	40
13,200 to 13,250	25
22,000 to 23,600	100

37. Section 21.807 is amended by adding a new paragraph (c) as follows:

§ 21.807 Station at temporary fixed locations.

(c) Prior coordination of mobile assignments will be in accordance with the procedures in § 21.100(d) except that the prior coordination process for mobile (temporary fixed) assignments may be completed orally and the period allowed for response to a coordination notification may be less than 30 days if the parties agree.

PART 74—EXPERIMENTAL, AUXILIARY AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES

38. The authority citation for Part 74 continues to read:

Authority: 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply sections: 47 U.S.C. 301, 303, 307, unless otherwise noted.

39. Section 74.15 is amended by adding a new paragraph (f) as follows:

§ 74.15 Station license period.

(f) Licenses held by broadcast network-entities under Subpart F will be issued for a period of 5 years beginning with the date of grant. An application for renewal of license (FCC Form 313-R) shall be filed not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed. If the prescribed deadline falls on a nonbusiness day, the cutoff shall be the close of business of the first full business day thereafter.

40. Part 74 is amended by adding a new § 74.600 to Subpart F as follows:

§ 74.600 Eligibility for license.

A license for a station in this subpart will be issued only to a television broadcast station, a television broadcast network-entity, a low power television station, or a television translator station.

41. Section 74.602 is amended by adding new text to the end of paragraph (a) introductory text; removing all entries from 6425 MHz through 6525 MHz in the column labeled "BAND B" of the frequency table in paragraph (a) introductory text; removing Note 3 of the frequency table in paragraph (a) introductory text; by revising paragraph (e) and adding new paragraph (j) as follows:

§ 74.602 Frequency assignment.

(a) * * * The band segment 6425-6525 MHz is available for broadcast auxiliary stations as described in paragraph (j) of this section. Broadcast network-entities may also use the 1990-2110, 6425-6525 and 6875-7125 MHz bands for mobile television pick-up only.

(e) Communication common carriers in the Local Television Transmission Service (Part 21) may be assigned frequencies available to television broadcast station licensees and broadcast network-entities for the purpose of providing service to television broadcast stations and broadcast network-entities, respectively.

(j) 6425 to 6525 MHz—*Mobile Only.* Paired and unpaired operations permitted. Use of this spectrum for direct delivery of video programs to the general public or multi-channel cable distribution is not permitted. This band is co-equally shared with mobile stations licensed pursuant to Parts 21, 78 and 94 of the Commission's Rules. The following channel plans apply.

(1) 1 MHz maximum authorized bandwidth channels.

Transmit (or receive MHz)	Receive (or transmit) (MHz)
6425.5	6475.5
6450.5	6500.5

(2) 8 MHz maximum authorized bandwidth channels.

Transmit (or receive MHz)	Receive (or transmit) (MHz)
6430.0	6480.0
6438.0	6488.0
6446.0	6596.0
6455.0	6505.0
6463.0	6513.0
6471.0	6521.0

(3) 25 MHz maximum authorized bandwidth channels.

Transmit (or receive MHz)	Receive (or transmit) (MHz)
6437.5	6487.5
6462.5	6512.5

42. Section 74.631 is amended by revising the opening of the first sentence in paragraph (e) and adding a new paragraph (j) as follows:

§ 74.631 Permissible service.

(e) Except as provided in paragraphs (a), (d), (f) and (j) of this section, * * *

(j) A broadcast network-entity may use television auxiliary service stations to transmit their own television program materials to broadcast stations, other broadcast network-entities, cable systems and cable network-entities: *Provided, however,* that the bands 1990-2110 MHz, 6425-6525 MHz and 6875-7125 MHz may be used by broadcast network-entities only for television pick-up stations.

43. Section 74.632 is amended by revising the first sentence of paragraph (a) as follows:

§ 74.632 Licensing requirements.

(a) Licenses for television pickup, television STL, television microwave booster, or television relay stations will be issued only to licensees of television broadcast stations, and broadcast network-entities and, further, on a secondary basis, to licensees of low power television stations. * * *

44. Section 74.636 is amended by removing the designation "(a)" from the first paragraph, revising the table, and removing paragraph (b) as follows:

§ 74.636 Power limitations.

Frequency band (MHz)	Maximum allowable transmitter power		Maximum allowable EIRP	
	Fixed (W)	Mobile (W)	Fixed (dBW)	Mobile (dBW)
1,990 to 2,110	20.0	12.0		
2,450 to 2,500	20.0	12.0		
6,425 to 6,525		12.0		+35
6,875 to 7,125	20.0	12.0	+55	+35
12,700 to 13,250	5.0	1.5	+55	+45
17,700 to 18,600	10.0		+55	
18,600 to 19,700	10.0		+55	
31,000 to 31,300	0.05	0.05		
38,600 to 40,000		1.5		

¹ The power delivered to the antenna is limited to -3 dBW.

45. Section 74.637 is amended by replacing the phrase "17,700-19,700 MHz and 31,000-31,300 MHz bands" with the phrase "bands 6425-6525 MHz, 17,700-19,700 MHz, and 31,000-31,300 MHz" in paragraph (b), and adding new paragraph (g) as follows:

§ 74.637 Emission and bandwidth.

(g) The maximum bandwidth which will be authorized per frequency assignment is set out in the table which follows. Regardless of the maximum authorized bandwidth specified for each frequency band, the Commission reserves the right to issue a license for less than the maximum bandwidth if it appears that less bandwidth would be sufficient to support an applicant's intended communications.

Frequency Band (MHz)	Maximum authorized bandwidth (MHz)
1,990 to 2,110	18
6,425 to 6,525	25
6,875 to 7,125	20
12,700 to 13,250	25
17,700 to 19,700	80
31,000 to 31,300	25 or 50
38,600 to 40,000	

46. Section 74.638 is amended by revising the heading and paragraph (b) as follows:

§ 74.638 Frequency Coordination.

(b) Coordination of assignments in the 6425-6525 MHz and 17.7-19.7 GHz bands will be in accordance with the procedure established in § 21.100(d) *except* that the prior coordination process for mobile (temporary fixed) assignments may be completed orally and the period allowed for response to a coordination notification may be less than 30 days if the parties agree.

47. Section 74.641 is amended by revising paragraph (a) introductory text, adding the following entries to the beginning of the table in paragraph (a)(1), and removing paragraph (a)(4) as follows:

§ 74.641 Antenna systems.

(a) For fixed stations operating between 1990 MHz and 31.3 GHz and

aeronautical mobile stations operating between 31.0 GHz and 31.3 GHz, the following standards apply:

(1) * * *

Frequency (MHz)	Category	Maximum beamwidth to 3 dB points (included angle in degrees)	Minimum antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels					
				5 to 10	10 to 15	15 to 20	20 to 30	30 to 100	100 to 140
1,990 to 2,110	A	5.0	n/a	12	18	22	25	29	33
	B	6.0	n/a	5	18	20	20	25	28
6,875 to 7,125	A	1.5	n/a	26	29	32	34	38	41
	B	2.0	n/a	21	25	29	32	35	39

48. Part 74 is amended by adding a new § 74.643 as follows:

§ 74.643 Interference to geostationary-satellites.

These limitations are necessary to minimize the probability of harmful interference to reception in the bands 6425-6525 MHz, 6875-7075 MHz and 12.7-12.75 GHz on board geostationary space stations in the fixed-satellite service (Part 25).

(a) *6425 to 6525 and 6875 to 7075 MHz.* No directional transmitting antenna utilized by a fixed station operating in these bands shall be aimed within 2 degrees of the geostationary-satellite orbit, taking into account atmospheric refraction. However, exception may be made in unusual circumstances upon a showing that there is no reasonable alternative to the transmission path proposed. If there is no evidence that such exception would cause possible harmful interference to an authorized satellite system, said transmission path may be authorized on waiver basis where the maximum value of the equivalent isotropically radiated power (EIRP) does not exceed:

(1) +47 dBW for any antenna beam directed within 0.5 degrees of the stationary satellite orbit or

(2) +47 to +55 dBW, on a linear decibel scale (8 dB per degree) for any antenna beam directed between 0.5 degrees and 1.5 degrees of the stationary orbit.

(b) *12.7 to 12.75 GHz.* No directional transmitting antenna utilized by a fixed station operating in this band shall be aimed within 1.5 degrees of the geostationary-satellite orbit, taking into account atmospheric refraction. However, exception may be made in unusual circumstances upon a showing that there is no reasonable alternative to the transmission path proposed. If there is no evidence that such exception would cause possible harmful interference to an authorized satellite system, said transmission path may be authorized on waiver basis where the maximum value of the equivalent

isotropically radiated power (EIRP) does not exceed +45 dBW for any antenna beam directed within 1.5 degrees of the stationary satellite orbit.

(c) Methods for calculating the azimuths to be avoided may be found in: CCIR Report No. 393 (Green Books), New Delhi, 1970; in "Radio-Relay Antenna Pointing for controlled Interference With Geostationary-Satellites" by C. W. Lundgren and A. S. May, *Bell System Technical Journal*, Vol. 48, No. 10, pp. 3387-3422, December 1969; and in "Geostationary Orbit Avoidance Computer Program" by Richard G. Gould, Common Carrier Bureau Report CC-7201, FCC, Washington, DC, 1972. This latter report is available through the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22151, in printed form (PB-211 500) or source card deck (PB-211 501).

49. Part 74 is amended by adding a new § 74.644 as follows:

§ 74.644 Minimum path lengths for fixed links.

(a) The distance between end points of a fixed link must equal or exceed the value set forth in the table below or the EIRP must be reduced in accordance with the equation set forth below.

Frequency band (MHz)	Minimum path length (km)
below 1,850	n/a
1,850-2,110	17
6,425-7,125	17
12,200-13,250	5
above 17,700	n/a

(b) For paths shorter than those specified in the Table, the EIRP shall not exceed the value derived from the following equation.

$$\text{EIRP} = 30 - 20 \log [A/B], \text{ dBW}$$

where:

EIRP = equivalent isotropic radiated power in dBW.

A = Minimum path length from the Table for the frequency band in kilometers.

B = The actual path length in kilometers.

(c) Upon an appropriate technical showing, applicants and licensees

unable to meet the minimum path length requirement may be granted an exception to these requirements.

[Note. Links authorized prior to April 1, 1987, are excluded from this requirement, except that, effective April 1, 1992, the Commission will require compliance with the criteria where an existing link would otherwise preclude establishment of a new link.]

50. Section 74.661 is revised to read as follows:

§ 74.661 Frequency tolerance.

Stations in this service shall maintain the carrier frequency of each authorized transmitter to within the following percentage of the assigned frequency.

Frequency band (MHz)	Frequency Tolerance	
	Fixed (%)	Mobile (%)
1,990 to 2,110	* 0.005	0.005
6,425 to 6,525		0.005
6,875 to 7,125	* 0.005	0.005
12,700 to 13,250	* 0.005	0.005
17,700 to 18,820	0.003	
18,920 to 19,700	0.003	
31,000 to 31,300	0.03	0.03
38,800 to 40,000	* 0.005	* 0.005

* For transmitters with an output power of 50 mW or less, the frequency tolerance need only be 0.05%.

* Television translator relay stations shall maintain a frequency tolerance of 0.002%.

PART 78—CABLE TELEVISION RELAY SERVICE

51. The authority citation for Part 78 continues to read:

Authority: 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309, unless otherwise noted.

52. Section 78.5 is amended by adding a new paragraph (i) as follows:

§ 78.5 Definitions.

* * * * *

(i) *Cable network-entity.* A cable network-entity is an organization which produces programs available for simultaneous transmission by cable systems serving a combined total of at least 5,000,000 subscribers and having distribution facilities or circuits

available to such affiliated stations or cable systems.

53. Section 78.11 is amended by adding a sentence after the first sentence in paragraph (d)(2) and by adding a new paragraph (f) as follows:

§ 78.11 Permissible service.

* * *

(d) * * *

(2) * * * Changes for the programming material are not subject to this restriction and cable network-entities may fully charge for their services. * * *

* * *

(f) A cable network-entity may use CARS stations to transmit their own television program materials to cable systems, other cable network-entities, broadcast stations and broadcast network-entities: *Provided, however,* that the bands 1990-2110 MHz, 6425-6525 MHz and 6875-7125 MHz may be used by cable network-entities only for CARS pick-up stations.

* * *

54. Section 78.13 is revised to read as follows:

§ 78.13 Eligibility for license.

A license for CARS station will be issued only:

(a) to the owner or one who is responsible for the management and operation of a cable television system,

(b) to a cooperative enterprise wholly owned by cable television owners or operators, or

(c) a cable network-entity upon showing that the applicant is qualified under the Communications Act of 1934, that frequencies are available for the proposed operation, and that the public interest, convenience, and necessity will be served by a grant thereof.

55. Section 78.18 is amended by adding new paragraphs (a)(6) through (a)(8) as follows:

§ 78.18 Frequency assignments.

(a) * * *

(6) *6425 to 6525 MHz-Mobile Only.* Paired and unpaired operations permitted. Use of this spectrum for direct delivery of video programs to the general public or multi-channel cable distribution is not permitted. This band is co-equally shared with mobile stations licensed pursuant to Parts 21, 74 and 94 of the Commission's Rules. The following channels plans apply.

(i) 1 MHz maximum authorized bandwidth channels.

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
6425.5.....	6475.5
6450.5.....	6500.5

(ii) 8 MHz maximum authorized bandwidth channels.

Transmit (or receive) (MHz):	Receive (or transmit) (MHz)
6430.0.....	6480.0
6438.0.....	6488.0
6446.0.....	6506.0
6455.0.....	6505.0
6463.0.....	6513.0
6471.0.....	6521.0

(iii) 25 MHz maximum authorized bandwidth channels.

Transmit (or receive) (MHz):	Receive (or transmit) (MHz)
6437.5.....	6487.5
6462.5.....	6512.5

(7) *1990-2110 MHz—Mobile only.* Use of this spectrum for direct delivery of video programs to the general public or multi-channel cable distribution is not permitted. This band is co-equally shared with stations licensed pursuant to Parts 21 and 74 of the Commission's Rules. (Common carriers may use this band pursuant to provisions of § 21.801(b).) The following channeling plan applies subject to the provisions of § 74.604.

Frequency Band (MHz)

1990-2008
2008-2025
2025-2042
2042-2059
2059-2076
2076-2093
2093-2110

(8) *6875-7125 MHz—Mobile only.* Use of this spectrum for direct delivery of video programs to the general public or multi-channel cable distribution is not permitted. This band is co-equally

shared with stations licensed pursuant to Parts 21 and 74 of the Commission's Rules. (Common carriers may use this band pursuant to provisions of § 21.801(b).) The following channeling plan applies subject to the provisions of § 74.604.

Frequency Band (MHz)

6875-6900
6900-6925
6925-6950
6950-6975
6975-7000
7000-7025
7025-7050
7050-7075
7075-7100
7100-7125

56. Section 78.36 is amended by revising the introductory text of paragraph (a) and paragraph (b) as follows:

§ 78.36 Frequency Coordination.

(a) *12.7-13.25 GHz.* Coordination of fixed and mobile assignments will be in accordance with the procedures set forth below.

* * *

(b) *6425-6525 MHz and 17.7-19.7 GHz.* Coordination of fixed and mobile assignments will be in accordance with the procedure established in § 21.100(d), *except* that the prior coordination process for mobile (temporary fixed) assignments may be completed orally and the period allowed for response to a coordination notification may be less than 30 days if the parties agree.

57. Section 78.101 is amended by revising paragraph (a), and removing paragraphs (c) and (d) to read as follows:

§ 78.101 Power limitations.

(a) On any authorized frequency, the average power delivered to an antenna shall be the minimum amount of power necessary to carry out the communications desired. In no event shall the average transmitter power or equivalent isotropically radiated power (EIRP) exceed the values specified below.

Frequency band (MHz)	Maximum allowable transmitter power		Maximum allowable EIRP	
	Fixed (W)	Mobile (W)	Fixed (dBW)	Mobile (dBW)
1,990 to 2,110.....		20.0		
6,425 to 6,525.....		20.0		+35
6,875 to 7,125.....		20.0		+35
12,700 to 13,250.....	5.0	1.5	+55	+45
17,700 to 18,600.....	10.0		+55	
18,600 to 18,800.....	10.0		+35	
18,800 to 19,700.....	10.0		+55	

Frequency band (MHz)	Maximum allowable transmitter power		Maximum allowable EIRP	
	Fixed (W)	Mobile (W)	Fixed (dBW)	Mobile (dBW)
31,000 to 31,300.....	0.05	0.05		

¹ The power delivered to the antenna is limited to -3 dBW.

58. Section 78.103 is amended by adding new paragraph (e) as follows:

§ 78.103 Emission and bandwidth.

(e) The maximum bandwidth that will be authorized per frequency assignment is set out in the table that follows. Regardless of the maximum authorized bandwidth specified for each frequency band, the Commission reserves the right to issue a license for less than the maximum bandwidth if it appears that a bandwidth less than the maximum would be sufficient to support an applicant's intended communications.

Maximum
authorized
bandwidth
(MHz)

Frequency band (MHz):	
1,990 to 2,110.....	17 or 18.
6,425 to 6,525.....	8 or 25.
6,875 to 7,125.....	25.
12,700 to 13,250.....	25.
17,700 to 19,700.....	80.
31,000 to 31,300.....	25 or 50.

59. Part 78 is amended by adding a new § 78.106 as follows:

§ 78.106 Interferences to geostationary-satellites.

These limitations are necessary to minimize the probability of harmful interference to reception in the bands 2655-2690 MHz, 5850-7075 MHz, and 12.7-13.25 GHz on board geostationary space stations in the fixed-satellite service (Part 25). Facilities authorized prior to July 1, 1978 which exceed the power levels in paragraphs (a) and (b) of this section are permitted to operate indefinitely, provided that the operation of such facilities does not result in harmful interference to reception in these band on board geostationary space stations.

(a) 2655 to 2690 MHz and 5850 to 7075 MHz. No directional transmitting antenna utilized by a fixed station operating in these bands shall be aimed within 2 degrees of the geostationary-satellite orbit, taking into account atmospheric refraction. However, exception may be made in unusual circumstances upon a showing that there is no reasonable alternative to the

transmission path proposed. If there is no evidence that such exception would cause possible harmful interference to an authorized satellite system, said transmission path may be authorized on waiver basis where the maximum value of the equivalent isotropically radiated power (EIRP) does not exceed:

(1) +47 dBW for any antenna beam directed within 0.5 degrees of the stationary satellite orbit or

(2) +47 to +55 dBW, on a linear decibel scale (8 dB per degree) for any antenna beam directed between 0.5 degrees and 1.5 degrees of the stationary orbit.

(b) 12.7-13.25 GHz. No directional transmitting antenna utilized by a fixed station operating in this band shall be aimed within 1.5 degrees of the geostationary-satellite orbit, taking into account atmospheric refraction. However, exception may be made in unusual circumstances upon a showing that there is no reasonable alternative to the transmission path proposed. If there is no evidence that such exception would cause possible harmful interference to an authorized satellite system, said transmission path may be authorized on waiver basis where the maximum value of the equivalent isotropically radiated power (EIRP) does not exceed +45 dBW for any antenna beam directed within 1.5 degrees of the stationary satellite orbit.

(c) Methods for calculating the azimuths to be avoided may be found in: CCIR Report No. 393 (Green Books), New Delhi, 1970; in "Radio-Relay Antenna Pointing for controlled Interference With Geostationary-Satellites" by C.W. Lundgren and A.S. May, *Bell System Technical Journal*, Vol. 48, No. 10, pp. 3387-3422, December 1969; and in "Geostationary Orbit Avoidance Computer Program" by Richard G. Gould, Common Carrier Bureau Report CC-7201, FCC, Washington, DC, 1972. This latter report is available through the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22151, in printed form (PB-211 500) or source card deck (PB-211 501).

60. Part 78 is amended by adding a new § 78.108 as follows:

§ 78.108 Minimum path lengths for fixed links.

(a) The distance between end points of a fixed link must equal or exceed the value set forth in the table below or the EIRP must be reduced in accordance with the equation set forth below.

Minimum
path length
(km)

Frequency band (MHz):	
12,200 to 13,250.....	5
Above 17,700.....	N/A

(b) For paths shorter than those specified in the Table, the EIRP shall not exceed the value derived from the following equation.

$$\text{EIRP} = 30 - 20 \log [A/B], \text{ dBW}$$

Where:

EIRP = equivalent isotropic radiated power in dBW.

A = Minimum path length from the Table for the frequency band in kilometers.

B = The actual path length in kilometers.

(c) Upon an appropriate technical showing, applicants and licensees unable to meet the minimum path length requirement may be granted an exception to these requirements.

Note.—Links authorized prior to April 1, 1987, are excluded from this requirement, except that, effective April 1, 1992, the Commission will require compliance with the criteria where an existing link would otherwise preclude establishment of a new link.]

61. Section 78.111 is revised as follows:

§ 78.111 Frequency tolerance.

Stations in this service shall maintain the carrier frequency of each authorized transmitter to within the following percentage of the assigned frequency.

Frequency band (MHz)	Frequency tolerance	
	Fixed (percent)	Mobile (percent)
1,990 to 2,110.....		0.005
6,425 to 6,525.....		0.005
6,875 to 7,125.....		0.005
12,700 to 13,250 ¹	0.005	0.005
17,700 to 18,820.....	0.003	
18,820 to 18,920.....	0.001	
18,920 to 19,700.....	0.003	
31,000 to 31,300.....	0.05	0.05

¹ Stations that employing vestigial sideband AM transmissions shall maintain their operating frequency within 0.0005% the visual carrier, and the aural carrier shall be 4.5 MHz ± 1 kHz above the visual carrier frequency.

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

62. The authority citation for Part 94 continues to read:

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

63. Section 94.9 (Permissibility of communications) is amended by replacing the phrase "above 21,200 MHz" with the phrase "above 21,200 MHz and in the frequency band 6425–6525 MHz" in paragraphs (b)(2)(iii) and (b)(3).

64. The table in paragraph (b) of § 94.61 is amended by adding the frequency listed below in numerical order, removing Note 15 and adding Notes 30 and 31 to read as follows:

§ 94.61 Applicability.

(b) * * *

6425–6525.....[30, 31]

[30] This band is co-equally shared with mobile stations licensed pursuant to Parts 21, 74 and 78 of the Commission's Rules.

[31] Use of this spectrum for direct delivery of video programs to the general public or multi-channel cable distribution is not permitted.

65. In § 94.63 (Interference protection criteria for operation-fixed stations), paragraph (a) is amended by replacing the phrase "in the bands 10,550–10,680 MHz," with the phrase "in the bands 6425–6525 MHz, 10,550–10,680 MHz,"; and also replacing the phrase "§ 21.100(d) of this chapter." with the phrase "§ 21.100(d) *except* that the prior coordination process for mobile (temporary fixed) assignments may be completed orally and the period allowed for response to a coordination notification may be less than 30 days if the parties agree."

66. Section 94.65 is amended by redesignating paragraphs (g)(1) as (g)(4) and (g)(2) as (g)(3); and adding new paragraphs (g)(1), (g)(2), and (m) as follows:

§ 94.65 Frequencies.

(g) * * *

(1) 800 kHz maximum authorized bandwidth channels.

Transmit (or receive) (MHz):	Receive (or transmit) (MHz)
6525.5.....	6870.5
6526.3.....	6871.3
6527.1.....	6872.1

(2) 1,600 kHz maximum authorized bandwidth channels.

Transmit (or receive) (MHz):	Receive (or transmit) (MHz)
6525.5.....	6870.5
6527.5.....	6872.5
6529.1.....	6874.1

(m) 6425 to 6525 MHz—*Mobile*. Paired and un-paired operations permitted. Use of this spectrum for direct delivery of video programs to the general public or multi-channel cable distribution is not permitted. This band is co-equally shared with mobile stations licensed pursuant to Parts 21, 74 and 78 of the Commission's Rules. Stations not intended to be operated while in motion will be licensed under the provision of § 94.25(d). The following channel plans apply.

(1) 1 MHz maximum authorized bandwidth channels.

Transmit (or receive) (MHz):	Receive (or transmit) (MHz)
6425.5.....	6575.5
6450.5.....	6500.5

(2) 8 MHz maximum authorized bandwidth channels.

Transmit (or receive) (MHz):	Receive (or transmit) (MHz)
6430.0.....	6480.0
6438.0.....	6488.0
6448.0.....	6596.0
6455.0.....	6505.0

(3) 25 MHz maximum authorized bandwidth channels.

Transmit (or receive) (MHz):	Receive (or transmit) (MHz)
6437.5.....	6487.5
6462.5.....	6512.5

67. The table in paragraph (a) of § 94.67 is amended by adding the following entry in numerical order:

§ 94.67 Frequency tolerance:

(a) * * *

Frequency band (MHz)	Tolerance as percentage of assigned frequency
6425 to 6525	0.005

68. The table in paragraph (b) of § 94.71 is amended by adding the following entry in numerical order:

§ 94.71 Emission and bandwidth limitations.

(b) * * *

Frequency band (MHz)	Maximum authorized bandwidth
6,425 to 6,525	25

69. Section 94.73 is amended by removing paragraphs (a)(1) and (a)(2) and adding a new table to paragraph (a) as follows:

§ 94.73 Power limitations.

(a) * * *

Frequency band (MHz)	Maximum allowable transmitter power		Maximum allowable EIRP ^a	
	Fixed (W)	Mobile (W)	Fixed (dBW)	Mobile (dBW)
928 to 929	5.0		+17	
952 to 960	^{1, 2} 20.0		³ +40	
1,850 to 1,990	20.0		+45	
2,130 to 2,150	20.0		+45	
2,150 to 2,160	20.0		³ +45	
2,180 to 2,200	20.0		+45	
2,450 to 2,500	20.0		+45	

Frequency band (MHz)	Maximum allowable transmitter power		Maximum allowable EIRP ²	
	Fixed (W)	Mobile (W)	Fixed (dBW)	Mobile (dBW)
2,500 to 2,686.....	10.0		⁴ +45	
2,686 to 2,690.....	0.25		⁴ +45	
6,425 to 6,525.....		20.0		+35
6,525 to 6,875.....	20.0		+50	
10,550 to 10,565.....	10.0		+40	
10,565 to 10,615.....	(⁶)			
10,615 to 10,630.....	10.0		+40	
10,630 to 10,680.....	(⁶)			
12,200 to 12,700 ⁵	10.0		⁴ +50	
12,700 to 13,250.....	10.0		+50	
17,700 to 18,600.....	10.0		+55	
18,600 to 18,800.....	⁷ 10.0		+35	
18,800 to 19,700.....	10.0		+55	
21,200 to 23,600 ⁵	10.0		+40	
31,000 to 31,300.....	0.05	0.05		
38,600 to 40,000.....	10.0		+40	

¹ When an omnidirectional transmitting antenna is authorized the maximum shall be 100 watts.

² Peak envelope power shall not exceed five times the average power.

³ When an omnidirectional transmitting antenna is authorized the maximum shall be +30 dBW.

⁴ Also see § 94.77.

⁵ For low power operations see §§ 94.90 and 94.91.

⁶ The output power of a Digital Termination System nodal transmitter shall not exceed 0.5 watts per 250 kHz. The output power of a Digital Termination System user transmitter shall not exceed 0.04 watts per 250 kHz. The transmitter power in terms of the watts specified is the peak envelope power of the emission measured at the associated antenna input port.

⁷ Maximum power delivered to antenna shall not exceed -3 dBW.

⁸ Remote alarm units that are part of a multiple address central station protection system are authorized a maximum of 2 watts.

70. Section 94.77 is revised as follows:

§ 94.77 Interference to geostationary-satellites.

These limitations are necessary to minimize the probability of harmful interference to reception in the bands 2655-2690 MHz, 6425-6875 MHz, and 12.7-12.75 GHz on board geostationary-space stations in the fixed-satellite service (Part 25). Stations authorized prior to July 1, 1976 in the band 2655-2690 MHz, which exceed the power levels in paragraphs (a) and (b) of this section are permitted to operate indefinitely, provided that the operations of such stations does not result in harmful interference to reception in these bands on board geostationary space stations.

(a) 2655 to 2690 MHz and 6425 to 6875 MHz. No directional transmitting antenna utilized by a fixed station operating in these bands shall be aimed within 2 degrees of the geostationary-satellite orbit, taking into account atmospheric refraction. However, exception may be made in unusual circumstances upon a showing that there is no reasonable alternative to the transmission path proposed. If there is no evidence that such exception would cause possible harmful interference to an authorized satellite system, said transmission path may be authorized on

waiver basis where the maximum value of the equivalent isotropically radiated power (EIRP) does not exceed:

(1) +47 dBW for any antenna beam directed within 0.5 degrees of the stationary satellite orbit or (2) +47 to +55 dBW, on a linear decibel scale (8 dB per degree) for any antenna beam directed between 0.5 degrees and 1.5 degrees of the stationary orbit.

(b) 12.7 to 12.75 GHz. No directional transmitting antenna utilized by a fixed station operating in this band shall be aimed within 1.5 degrees of the geostationary-satellite orbit, taking into account atmospheric refraction. However, exception may be made in unusual circumstances upon a showing that there is no reasonable alternative to the transmission path proposed. If there is no evidence that such exception would cause possible harmful interference to an authorized satellite system, said transmission path may be authorized on waiver basis where the maximum value of the equivalent isotropically radiated power (EIRP) does not exceed +45 dBW for any antenna beam directed within 1.5 degrees of the stationary satellite orbit.

(c) Methods for calculating the azimuths to be avoided may be found in: CCIR Report No. 393 (Green Books), New Delhi, 1970; in "Radio-Relay Antenna Pointing for controlled

Interference With Geostationary-Satellites" by C. W. Lundgren and A. S. May, *Bell System Technical Journal*, Vol. 48, No. 10, pp. 3387-3422, December 1969; and in "Geostationary Orbit Avoidance Computer Program" by Richard G. Gould, Common Carrier Bureau Report CC-7201, FCC, Washington, DC, 1972. This latter report is available through the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22151, in printed form (PB-211 500) or source card deck (PB-211 501).

71. Section 94.79 is added as follows:

§ 94.79 Minimum path lengths for fixed links.

(a) The distance between end points of a fixed link must equal or exceed the value set forth in the table below or the EIRP must be reduced in accordance with the equation set forth below.

Frequency band (MHz):	Minimum path length (km)
Below 1,850.....	N/A
1,850 to 2,110.....	17
6,425 to 7,125.....	17
12,200 to 13,250.....	5
Above 17,700.....	N/A

(b) For paths shorter than those specified in the Table, the EIRP shall not exceed the value derived from the following equation.

$$\text{EIRP} = 30 - 20 \log[A/B], \text{ dBW}$$

Where:

EIRP = equivalent isotropic radiated power in dBW.

A = Minimum path length from the Table for the frequency band in kilometers.

B = The actual path length in kilometers.

(c) Upon an appropriate technical showing, applicants and licensees unable to meet the minimum path length requirement may be granted an exception to these requirements.

[Note.—Links authorized prior to April 1, 1987, need not comply with this requirement.]

Federal Communications Commission.

William J. Tricarico,
Secretary.

Appendix A

List of Respondents to the Second Notice of Proposed Rule Making in General Docket 82-334

ALC Communications Corporation
American Cablesystems Corporation,
Century Communications Corp., Daniels & Associates, Inc., Television Enterprises, Inc., United Artists Cablesystems Corporation, and United Cable Television Corporation.

American Family Broadcast Group [WTOC-TV, WAFF, KFVS-TV, KWWL, KTIV-TV]
 American Petroleum Institute [Central Committee on Telecommunications]
 American Telephone and Telegraph Company
 Ameritech Operating Companies [Illinois Bell Telephone Company, Indiana Bell Telephone Company, Inc., Michigan Bell Telephone Company, The Ohio Bell Telephone Company and Wisconsin Bell, Inc.]
 Arizona Department of Public Safety
 The Association of American Railroads
 The Association of Maximum Service Telecasters
 Atlantic Telecasting Corp. [WECT]
 Avantek, Inc.
 Bell Atlantic Companies [The Bell Telephone Company of Pennsylvania, the four Chesapeake and Potomac Companies; the Diamond State Telephone Company, and New Jersey Bell Telephone Company]
 Bellsouth Corporation [South Central Bell Telephone Company and Southern Bell Telephone and Telegraph Company]
 Cablevision Systems Corporation
 California Public-Safety Radio Association, Inc.
 State of California [Telecommunications Division]
 CBS, Inc.
 Centel Videopath, Inc.
 The Christian Broadcasting Network, Inc.
 Duluth-Superior Area Educational Television Corporation
 Electronic Industries Association [Fixed Point-to-Point Communications Section]
 Emerson College, The Hospital Council of Western Pennsylvania, Mercer County Community College, The Mineola Union Free School District, The Board of Education of New Trier Township, Illinois, Oakton Community College, The Pennsylvania Hospital Television Network, The Board of Education of Union, New Jersey
 Gannett Company, Inc.
 Gaylord Broadcasting Company
 Gilmore Broadcasting Company
 GTE Telephone Operating Companies
 H&C Communications, Inc. [KCCI-TV, KPRC-TV, KVOA-TV, WESH-TV, WTVF]
 Hampton Road Educational Telecommunications Association, Inc. [WHRO-TV]
 Harris Corporation [Broadcast Microwave Operations and Farinon Divisions]
 Harte-Hanks Communications, Inc.
 The Hearst Corporation [WBAL-TV, WDH-TV, WISH-TV, WTAE-TV, KMBC-TV]
 Holston Valley Broadcasting Company [WKPT-TV]
 Hughes Aircraft Company [Microwave Communications Products]
 Idaho, State of [Department of Administration—Bureau of Communications]
 Iowa State University [WOI-AM, FM, TV]
 Kaiser Permanente Medical Care Program [Northern California Region]
 KCWY-TV [Rocky Mountain Comm. Network, Inc.]
 KHQ, Incorporated [KHQ-TV]
 Knight-Ridder Broadcasting, Inc. [WJRT-TV, WPRI-TV, WTEN-TV, WKTR-TV,

WKRN-TV, WALA-TV, KTVY and KOLD-TV]
 KNME-TV [Regents of the University of New Mexico]
 KODD [Smoky Hills Public Television Corporation]
 KRGV-TV [Mobile Video Tapes, Inc.]
 KTIV [American Blackhawk Broadcasting Company—div of American Family Broadcasting Group]
 KTUL Television, Inc.
 KXJB-TV [North American, Inc.]
 Los Angeles, County of [California]
 M/A-COM, Inc.
 MCI Telecommunications Corporation
 Meredith Corporation
 Midwest Television, Inc. [KFMB-TV, FM, AM]
 Morgan Murphy Stations, Western Divisions [KXLY—Spokane Television, Inc.]
 Multimedia, Inc. [KSDK, WBIR-TV, WLWT, WMAZ-TV, WZTV]
 National Association of Broadcasters
 National Broadcasting Company, Inc. [NBC]—
 National Cable Television Association, Inc.
 NYNEX Telephone Companies [New York Telephone Company, and New England Telephone and Telegraph Company]
 Pacific Bell [Pacific Telesis]
 Schwartz, Woods and Miller [On behalf of: Arizona Board of Regents for Arizona State University, Chicago Educational Television Association, Louisiana Educational Television Authority, Mississippi Authority for Educational Television, Mohawk-Hudson Council on Educational Television, Inc., New Jersey Public Broadcasting Authority, North Texas Public Broadcasting, Inc., The Public Broadcasting Foundation of Northwest Ohio, University of New Hampshire, University of North Carolina, and WHYY, Inc.]
 Scripps Howard Broadcasting Company [WCPO-TV, WENS, WXYZ-TV, KSHB-TV, WHC-TV, KNXV-TV, WFTS, KJRH, WPTV and eleven cable systems]
 Seattle Television Limited [KTZZ] and Greater Portland Broadcasting Corporation [KTDZ-TV]
 SPN Communications of Columbus, Inc. [WTVM(TV)]
 Texas Media Holding Company, Inc. [KTRK-TV]
 Times Mirror Microwave Communications Company
 Tribune Broadcasting Company [WPIX-TV, WGN-TV, KTLA, WGNX-TV, KWGN-TV and WCNO-TV]
 Turner Broadcasting System, Inc. [WTBS(TV), owner of two program networks, Cable News Network and Headline News]
 Twin Cities Public Television, Inc. [KTCA-TV and KTCI-TV]
 United States Transmission Systems, Inc.
 The Utilities Telecommunications Council
 WBRZ-TV [Louisiana Television Broadcasting Corp.]
 WCMH-TV
 WCJB-TV [Gainesville Television, Inc.]
 Western Tele-Communications, Inc.
 Western Union Telegraph Company
 WGBH Educational Foundation [WGBH-TV, WGBX-TV]
 WJAR-TV [Outlet Communications, Inc.]

WKTY-TV [Kentucky Central Television, Inc.]
 WPSD-TV [Paducah Newspapers, Inc.]
 WTMJ, Inc.
 WTVJ [WBC Broadcasting Corporation, A division of Wametco Broadcasting Company, Inc.]

[FR Doc. 87-4131 Filed 3-6-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-329; RM-5235]

Television Broadcasting Services; Montgomery, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document assigns UHF television Channel *63 to Montgomery, Alabama, as that community's second local noncommercial educational television service, in response to a petition filed by Troy State University. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 6, 1987.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-329, adopted January 23, 1987, and released February 20, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Assignments, in the entry for Montgomery, Alabama, Channel *63 is added.

Federal Communications Commission

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.

[FR Doc. 87-4834 Filed 3-6-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-115; RM-4964]

Radio Broadcasting Services;
Crawford, GAAGENCY: Federal Communications
Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 271A to Crawford, Georgia, as a first FM channel, at the request of Georgia Family Broadcasting. The transmitter site for Channel 271A is restricted to 12.4 kilometers (7.7 miles) southeast of the city. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 6, 1987. The window period for filing applications will open on April 7, 1987, and close on May 6, 1987.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-115, adopted January 30, 1987 and released February 20, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Lists of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of Allotments is amended by adding Crawford, Channel 271A, under Georgia.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.

[FR Doc. 87-4832 Filed 3-6-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-319; RM-5463]

Television Broadcasting Services;
Grants Pass, ORAGENCY: Federal Communications
Commission.

ACTION: Final rule.

SUMMARY: This document assigns UHF TV Channel 30+ to Grants Pass, Oregon, as the community's first local commercial television channel, at the request of Freedom Communications, Inc. Channel 30+ can be assigned in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.

EFFECTIVE DATE: April 17, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-319, adopted February 10, 1987, and released March 2, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Television Table of Assignments for Grants Pass, Oregon, is amended by adding Channel 30+.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.

[FR Doc. 87-4835 Filed 3-6-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-83; RM-5127, RM-5436]

Radio Broadcasting Services;
Humboldt and Huntingdon, TNAGENCY: Federal Communications
Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 287A to Humboldt, Tennessee and Channel 229A to Huntingdon, Tennessee, providing each community with a second FM service. This action was taken at the requests of F. Darrell Body and WJPJ, Inc., respectively. Channel 287A requires a site restriction of 10.0 kilometers (6.2 miles) northeast of Humboldt. Channel 229A requires a site restriction of 7.5 kilometers (4.7 miles) south of Huntingdon. With this action, this proceeding is terminated.

DATES: Effective April 6, 1987. The window period for filing applications will open on April 7, 1987 and close on May 6, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-83, adopted December 24, 1986, and released February 20, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of Allotments in the entry for Humboldt, Tennessee, Channel 287A is added and in the entry for Huntingdon, Tennessee, Channel 229A is added.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.

[FR Doc. 87-4833 Filed 3-6-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-102; RM-5124]

Radio Broadcasting Services; Sedona, AZ**AGENCY:** Federal Communications Commission.**ACTION:** Final rule.**SUMMARY:** This document allots Class C Channel 298 to Sedona, AZ, as that community's second local FM service, in response to a petition filed by Margaret C. Durham.

With this action, this proceeding is terminated.

EFFECTIVE DATE: April 6, 1987; the window period for filing applications will open on April 7, 1987, and close on May 6, 1987.**FOR FURTHER INFORMATION CONTACT:** Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 86-102, adopted January 12, 1987, and released February 20, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of Allotments, the entry for Sedona, AZ, is revised by adding Channel 298.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-4829 Filed 3-6-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-56; RM-5128]

Radio Broadcasting Services; Mariposa, CA**AGENCY:** Federal Communications Commission.**ACTION:** Final rule.**SUMMARY:** This document allots Channel 280A to Mariposa, CA, as that community's second local FM service, in response to a petition filed by Charles S. Hughes.

With this action, this proceeding is terminated.

EFFECTIVE DATE: April 6, 1987. The window period for filing applications will open on April 7, 1987, and close on May 6, 1987.**FOR FURTHER INFORMATION CONTACT:** Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 86-56, adopted January 30, 1987, and released February 20, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended by revising the entry for Mariposa, California, to add Channel 280A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-4830 Filed 3-6-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-376; RM-4988, 5378]

Radio Broadcasting Services; Ponte Vedra, FL**AGENCY:** Federal Communications Commission.**ACTION:** Final rule.**SUMMARY:** This document allots Channel 293A to Ponte Vedra Beach, Florida, as a first local FM service, at the request of Emission de Radio Balmaseda, Inc. The counterproposal filed by General

Broadcasting of Florida, Inc., proposing to allot Channel 227A to Ponte Vedra Beach in lieu of Channel 293A, is denied. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 6, 1987; The window period for filing applications will open on April 7, 1987, and close on May 6, 1987.**FOR FURTHER INFORMATION CONTACT:** Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 85-376, adopted January 20, 1987, and released February 20, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. Section 73.202(b), the Table of Allotments, is amended for Florida, by Adding Ponte Vedra Beach, Channel 293A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-4831 Filed 3-6-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 571**

[Docket No. 1-18, Notice 31]

Federal Motor Vehicle Safety Standards Controls and Displays**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.**ACTION:** Final rule; response to petitions for reconsideration.

SUMMARY: In a final rule published in the *Federal Register* on February 3, 1987, NHTSA amended a number of the requirements of Standard No. 101, *Controls and Displays*. In response to petitions for reconsideration, this notice amends Part 571 to permit compliance with either the earlier version of the standard or the amended standard until September 1, 1989. The agency will address other issues raised by petitioners in a separate notice.

DATES: The amendments made by this rule are effective March 9, 1987. Petitions for reconsideration must be received by April 8, 1987.

ADDRESS: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavey, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-5271).

SUPPLEMENTARY INFORMATION: In a final rule published in the *Federal Register* (52 FR 3244) on February 3, 1987, NHTSA amended a number of the requirements of Standard No. 101, *Controls and Displays*. The agency received several timely petitions for reconsideration. The petitioners expressed particular concern about the March 5, 1987 effective date for certain of the amendments.

While the primary purpose of the amendments was to permit greater flexibility in the illumination and identification of controls and displays, NHTSA recognized that some of the amendments could result in the need for manufacturers to modify existing designs. The agency adopted an effective date of September 1, 1989, for these amendments in order to provide adequate leadtime for such modifications.

Other amendments relieved restrictions and were not believed to result in the need for design modifications. The agency concluded that an effective date of 30 days after publication in the *Federal Register*, i.e., March 5, 1987, was in the public interest for these amendments. However, several petitioners stated that some of those latter amendments also result in the need for design modifications and requested that the effective date for these amendments be extended to September 1, 1989.

As is clear from the preamble to the February 1987 final rule, it was not NHTSA's intent to require manufacturers to make design

modifications within 30 days. While the agency is still analyzing some of the arguments made by petitioners, it has determined that one or more of the amendments effective March 5, 1987 will require some design changes.

Accordingly, NHTSA has decided to permit compliance with either the earlier version of the standard or the amended standard until September 1, 1989.

NHTSA is reissuing the earlier version of Standard No. 101, redesignated as Standard No. 100, to apply to vehicles manufactured before September 1, 1989. The application section of the standard makes it clear that manufacturers have the option of meeting the requirements of Standard No. 101 for any control or display as an alternative to Standard No. 100's requirements. Conforming amendments are made to the application section of Standard No. 101.

While the petitioners were particularly concerned about the March 5, 1987 effective date for some amendments, they also raised several other issues. Those issues will be addressed in a separate notice.

NHTSA notes that the notice number of the February 1987 final rule, Docket No. 1-18, Notice 28, had already been used on two occasions. The number of this notice is therefore 31.

The effect of the amendments made by this notice is to delay the effective date for the new requirements established by the February 1987 final rule until September 1, 1989. NHTSA finds, for good cause, it is in the public interest to provide immediately for optional compliance with the new requirements and to make those requirements mandatory on September 1, 1989. In the absence of an immediate effective date, manufacturers would be unable to certify that some of their vehicles currently being produced comply with Standard No. 101. The amendments impose no new requirements but instead increase manufacturer flexibility by extending the effective date for certain requirements. The September 1, 1989, effective date will give sufficient time for manufacturers to redesign their vehicles to meet the new requirements.

The agency has analyzed these amendments and determined that they are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency has determined that the economic effects of the amendments are so minimal that a full regulatory evaluation is not required. Since the amendments impose no new requirements but simply add compliance alternatives until September

1, 1989, any cost impacts would be in the nature of slight, nonquantifiable cost savings.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendments will not have a significant economic impact on a substantial number of small entities. For the reasons discussed above, the only impacts of the amendments will be in the nature of slight, nonquantifiable cost savings. Thus, neither manufacturers of motor vehicles, nor small businesses, small organizations, and small governmental units which purchase motor vehicles, will be significantly affected by the amendments. Accordingly, no regulatory flexibility analysis has been prepared.

Finally, the agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and determined that it will not significantly affect the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Section 571.100 is added to read as follows:

§ 571.100 Standard No. 100, Controls and displays.

S1. Scope. This standard specifies requirements for the location, identification, and illumination of motor vehicle controls and displays.

S2. Purpose. The purpose of this standard is to ensure the accessibility and visibility of motor vehicle controls and displays and to facilitate their selection under daylight and nighttime conditions, in order to reduce the safety hazards caused by the diversion of the driver's attention from the driving task, and by mistakes in selecting controls.

S3. Application. This standard applies to passenger cars, multipurpose passenger vehicles, trucks, and buses, manufactured before September 1, 1989. At the option of the manufacturer, motor vehicles may comply with the requirements of Federal Motor Vehicle Safety Standard No. 101, *Controls and Displays*, instead of the requirements of

this standard, for any control, display, or illumination.

S4. Definitions.

"Telltale" means a display that indicates, by means of a light-emitting signal, the actuation of a device, a correct or defective functioning or condition, or a failure to function.

"Gauge" means a display that is listed in S5.1 or in Table 2 and is not a telltale.

"Informational readout display" means a display using light-emitting diodes, liquid crystals, or other electro illuminating devices where one or more than one type of information or message may be displayed.

S5. Requirements. (a) Except as provided in paragraph (b) of this section, each passenger car, multipurpose passenger vehicle, truck and bus manufactured with any control listed in S5.1 or in column 1 of Table 1, and each passenger car, multipurpose passenger vehicle and truck or bus less than 10,000 pounds GVWR with any display listed in S5.1 or in column 1 of Table 2, shall meet the requirements of this standard for the location, identification, and illumination of such control or display.

(b) For vehicles manufactured before September 1, 1987, a manufacturer may, at its option—

(1) Meet the requirements in this standard to use identifying words or abbreviation or identifying symbol for a control by using those specified in Table 1(a) instead of Table 1. If none are specified in Table 1(a), none need be used for the control.

(2) Meet the requirements in this standard to use identifying words or abbreviation or identifying symbol for a display by using those specified in Table 2(a) instead of Table 2. If none are specified in Table 2(a), none need be used for the display.

S5.1 Location. Under the conditions of S6, each of the following controls that is furnished shall be operable by the driver and each of the following displays that is furnished shall be visible to the driver. Under conditions of S6, telltales and informational readout displays are considered visible when activated.

Hand-Operated Controls

- (a) Steering wheel.
- (b) Horn.
- (c) Ignition.
- (d) Headlamp.
- (e) Taillamp.
- (f) Turn signal.
- (g) Illumination intensity.
- (h) Windshield wiper.
- (i) Windshield washer.
- (j) Manual transmission shift lever, except transfer case.
- (k) Windshield defrosting and defogging system.
- (l) Rear window defrosting and defogging system.

- (m) Manual choke.
- (n) Driver's sun visor.
- (o) Automatic vehicle speed system.
- (p) Highbeam.
- (q) Hazard warning signal.
- (r) Clearance lamps.
- (s) Hand throttle.
- (t) Identification lamps.

Foot-Operated Controls

- (a) Service brake.
- (b) Accelerator.
- (c) Clutch.
- (d) Highbeam.
- (e) Windshield washer.
- (f) Windshield wiper.

Displays

- (a) Speedometer.
- (b) Turn signal.
- (c) Gear position.
- (d) Brake failure warning.
- (e) Fuel.
- (f) Engine coolant temperature.
- (g) Oil.
- (h) Highbeam.
- (i) Electrical charge.

S5.2 Identification.

S5.2.1 Vehicle controls shall be identified as follows:

(a) Except as specified in S5.2.1(b), any hand-operated control listed in column 1 of Table 1 that has a symbol designated in column 3 shall be identified by that symbol. Any such control for which no symbol is shown in Table 1 shall be identified by the word or abbreviation shown in column 2, if such word or abbreviation is shown. Words or symbols in addition to the required symbol, word or abbreviation may be used at the manufacturer's discretion for the purpose of clarity. Any such control for which column 2 of Table 1 and/or column 3 of Table 1 specifies "Mfr. Option" shall be identified by the manufacturer's choice of a symbol, word or abbreviation, as indicated by that specification in column 2 and/or column 3. The identification shall be placed on or adjacent to the control. The identification shall, under the conditions of S6, be visible to the driver and, except as provided in S5.2.1.1 and S5.2.1.2, appear to the driver perceptually upright.

(b) S5.2.1(a) does not apply to a turn signal control which is operated in a plane essentially parallel to the face plane of the steering wheel in its normal driving position and which is located on the left side of the steering column so that it is the control on that side of the column nearest to the steering wheel face plane.

S5.2.1.1 The identification of the following need not appear to the driver perceptually upright:

(a) A master lighting switch or headlamp and tail lamp control that adjusts control and display illumination

by means of rotation, or any other rotating control that does not have an off position.

(b) A horn control.

S5.2.1.2 The identification of a rotating control other than one described by S5.2.1.1 shall appear to the driver perceptually upright when the control is in the off position.

S5.2.2 Identification shall be provided for each function of any automatic vehicle speed system control and any heating and air conditioning system control, and for the extreme positions of any such control that regulates a function over a quantitative range. If this identification is not specified in Table 1 or 2, it shall be in word or symbol form unless color coding is used. If color coding is used to identify the extreme positions of a temperature control, the hot extreme shall be identified by the color red and the cold extreme by the color blue.

Example 1. A slide lever controls the temperature of the air in the vehicle heating system over a continuous range, from no heat to maximum heat. Since the control regulates a single function over a quantitative range, only the extreme positions require identification.

Example 2. A switch has three positions, for heat, defrost, and air conditioning. Since each position regulates a different function, each position must be identified.

S5.2.3 Except for informational readout displays, any display located within the passenger compartment and listed in column 1 of Table 2 that has a symbol designated in column 4, shall be identified by that symbol. Such display may, in addition be identified by the word or abbreviation shown in column 3. Any such display for which no symbol is provided in Table 2 shall be identified by the word or abbreviation shown in column 3. Informational readout displays may be identified by the symbol designated in column 4 of Table 2 or by the word or abbreviation shown in column 3. Additional words or symbols may be used at the manufacturer's discretion for the purpose of clarity. The identification required or permitted by this section shall be placed on or adjacent to the display that it identifies. The identification of any display shall, under the conditions of S6, be visible to the driver and appear to the driver perceptually upright.

S5.3 Illumination.

S5.3.1 Except for foot-operated controls or hand-operated controls mounted upon the floor, floor console, or steering column, or in the windshield header area, the identification required by S5.2.1 or S5.2.2 or any control listed

in column 1 of Table 1 and accompanied by the word "yes" in the corresponding space in column 4 shall be capable of being illuminated whenever the headlights are activated. However, control identification for a heating and air-conditioning system need not be illuminated if the system does not direct air directly upon windshield. If a gauge is listed in column 1 of Table 2 and accompanied by the word "yes" in column 5, then the gauge and its identification required by S5.2.3 shall be illuminated whenever the ignition switch and/or the headlamps are activated. Controls, gauges, and their identifications need not be illuminated when the headlamps are being flashed. A telltale shall not emit light except when identifying the malfunction or vehicle condition for whose indication it is designed or during a bulb check upon vehicle starting.

S5.3.2 Except for informational readout displays, each discrete and distinct telltale shall be of the color shown in column 2 of Table 2. The identification of each telltale shall be in a color that contrasts with the lens, if a telltale with a lens is used. Any telltale used in conjunction with a gauge need not be identified. The color of informational readout displays will be at the option of the manufacturer.












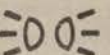
S5.3.3 Light intensities for controls, gauges, and their identification shall be continuously variable from: (a) A position at which either there is no light emitted or the light is barely discernible to a driver who has adapted to dark ambient roadway conditions to (b) a position providing illumination sufficient for the driver to identify the control or display readily under conditions of reduced visibility. Light intensities for informational readout systems shall

have at least two values, a higher one for day, and a lower one for nighttime conditions. The intensity of any illumination that is provided in the passenger compartment when and only when the headlights are activated shall also be variable in a manner that complies with this paragraph. The light intensity of each telltale shall not be variable and shall be such that, when activated, that telltale and its identification are visible to the driver under all daytime and nighttime conditions.

S6. *Conditions.* The driver is restrained by the crash protection equipment installed in accordance with the requirements of § 571.208 of this part (Standard No. 208), adjusted in accordance with the manufacturer's instructions.

BILLING CODE 4910-59-M

Table 1
Identification and Illumination of Controls

Column 1	Column 2	Column 3	Column 4
Hand Operated Controls	Identifying Words or Abbreviation	Identifying Symbol	Illumination
Master Lighting Switch	_____	 ⁵	_____
Headlamps and Tail lamps	(Mfr. Option) ²	(Mfr. Option) ²	_____
Horn	_____	 ⁴	_____
Turn Signal	_____	 ³ ₅	_____
Hazard Warning Signal	_____	 ⁵	Yes
Windshield Wiping System	_____		Yes
Windshield Washing System	_____		Yes
Windshield Washing and Wiping Combined	_____		Yes
Heating and or Air Conditioning Fan	_____	 or 	Yes
Windshield Defrosting and Defogging System	_____		Yes
Rear Window Defrosting and Defogging System	_____		Yes
Identification, Side Marker and or Clearance Lamps	_____	 ² ₅	Yes
Manual Choke	Choke	_____	_____
Engine Start	Engine Start ¹	_____	_____
Engine Stop	Engine Stop ¹	_____	Yes
Hand Throttle	Throttle	_____	_____
Automatic Vehicle Speed	(Mfr. Option)	_____	Yes
Heating and Air Conditioning System	(Mfr. Option)	(Mfr. Option)	Yes

¹ Use when engine control is separate from the key locking system.


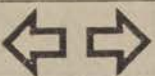








² Separate identification not required if controlled by master lighting switch.

³ The pair of arrows is a single symbol. When the controls for left and right turn operate independently, however, the two arrows may be considered separate symbols and be spaced accordingly.

⁴ Identification not required for vehicles with a GVWR greater than 10,000 lbs., or for narrow ring type controls.

⁵ Framed areas may be filled.

TABLE 1 (a)
Identification and Illumination of Controls

Column 1	Column 2	Col. 3	Col. 4
Hand Operated Controls	Identifying Words or Abbreviation	Identifying Symbol	Illumination
Headlamps and Tail Lamps	Lights	 ^{2 4}	—
Turn Signal	—	 —	—
Hazard Warning Signal	Hazard	 ⁴	Yes
Clearance Lamps System	Clearance Lamps or Cl Lps	 ^{3 4}	Yes
Windshield Wiping System	Wiper or Wipe	 Yes	Yes
Windshield Washing System	Washer or Wash	 Yes	Yes
Windshield Washing and Wiping Combined	Wash-Wipe	 Yes	Yes
Heating and/or Air Conditioning Fan	Fan	 Yes	Yes
Windshield Defrosting and Defogging System	Defrost, Defog or Def	 Yes	Yes
Rear Window Defrosting and Defogging System	Rear Defrost, Rear Defog or Rear Def	 Yes	Yes
Engine Start	Engine Start ¹	—	—
Engine Stop	Engine Stop ¹	—	Yes
Manual Choke	Choke	—	—
Hand Throttle	Throttle	—	—
Automatic Vehicle Speed	(Mfr. Option)	—	Yes
Identification Lamps	Identification Lamps or Id Lps	—	Yes
Heating and Air Conditioning System	(Mfr. Option)	—	Yes

1. Use when engine control is separate from the key locking system.

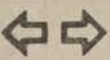









2. Use also when clearance, identification, parking and/or side marker lamps are controlled with the headlamp switch.

3. Use also when clearance lamps, identification lamps and/or side marker are controlled with one switch other than the headlamp switch.

4. Framed areas may be filled.

Table 2

Identification and Illumination of Displays

Column 1	Column 2	Column 3	Column 4	Column 5
Display	Telltale Color	Identifying Words or Abbreviation	Identifying Symbol	Illumination
Turn Signal Telltale	Green	Also see FMVSS 108	 ¹ 6	—
Hazard Warning Telltale	Red ⁴	Also see FMVSS 108	 ² 6	—
Seat Belt Telltale	Red ⁴	Fasten Belts or Fasten Seat Belts. Also see FMVSS 208.	 or 	—
Fuel Level Telltale	Yellow	Fuel	 or 	—
Gauge	—			Yes
Oil Pressure Telltale	Red ⁴	Oil		—
Gauge	—			Yes
Coolant Temperature Telltale	Red ⁴	Temp		—
Gauge	—			Yes
Electrical Charge Telltale	Red ⁴	Volts. Charge or Amp		—
Gauge	—			Yes
Highbeam Telltale	Blue or Green ⁴	Also see FMVSS 108	 ⁶	—
Malfunction in Anti-Lock or	Yellow	Antilock or Anti-lock. Also see FMVSS 105	—	—
Brake System	Red ⁴	Brake Also see FMVSS 105	—	—
Brake Air Pressure Position Telltale	Red ⁴	Brake Air Also see FMVSS 121	—	—
Speedometer	—	MPH ⁵	—	Yes
Odometer	—	— ³	—	—
Automatic Gear Position	—	Also see FMVSS 102	—	Yes

¹ The pair of arrows is a single symbol. When the indicator for left and right turn operate independently, however, the two arrows will be considered separate symbols and may be spaced accordingly.

² Not required when arrows of turn signal tell-tales that otherwise operate independently flash simultaneously as hazard warning tell-tale.









³ If the odometer indicates kilometers, then "KILOMETERS" or "km" shall appear, otherwise, no identification is required.

⁴ Red can be red-orange. Blue can be blue-green.

⁵ If the speedometer is graduated in miles per hour and in kilometers per hour, the identifying words or abbreviations shall be "MPH and km h" in any combination of upper or lower case letters.

⁶ Framed areas may be filled.

TABLE 2 (a)
Identification and Illumination of Internal Displays

Column 1	Col. 2	Column 3	Column 4	Column 5
Display	Telltale Color	Identifying Words or Abbreviation	Identifying Symbol	Illuminate
Turn Signal Tell Tale	Green	Also see FMVSS 108		—
Hazard Warning Tell Tale	Red ⁴	Also see FMVSS 108		—
Seat Belt Tell Tale	Red ⁴	Fasten Belts or Fasten Seat Belts. Also see FMVSS 208.		—
Fuel Level Tell Tale	Yellow	Fuel		—
Gauge	—	Fuel	—	Yes
Oil Pressure Tell Tale	Red ⁴	Oil		—
Gauge	—	Oil	—	Yes
Coolant Temperature Tell Tale	Red ⁴	Temp		—
Gauge	—	Temp	—	Yes
Electrical Charge Tell Tale	Red ⁴	Volts, Charge or Amp		—
Gauge	—	Volts, Charge or Amp	—	Yes
Speedometer	—	MPH ⁶	—	Yes
Odometer	—	—	—	—
Automatic Gear Position	—	Also see FMVSS 102	—	Yes
High Beam Tell Tale	Blue ⁴ or Green	Also see FMVSS 108		—
Brake Air Pressure Position Tell Tale	Red ⁴	Brake Air Also See FMVSS 121	—	—
Malfunction in Anti-Lock or	Yellow	Anti-Lock Also see FMVSS 105.75	—	—
Brake System	Red ⁴	Brake Also see FMVSS 105.75	—	—

- 1 The pair of arrows is a single symbol. When the indicator for left and right turn operate independently, however, the two arrows will be considered separate symbols and may be spaced accordingly.
- 2 Not required when arrows of turn signal tell tales that otherwise operate independently flash simultaneously as hazard warning tell tale.
- 3 If the odometer indicates kilometers, then "KILOMETERS" or "km" shall appear; otherwise, no identification is required.
- 4 Red can be red-orange. Blue can be blue-green.
- 5 Framed arrows may be filled.
- 6 If the speedometer is graduated in miles per hour and in kilometers per hour, the identifying words or abbreviations shall be "MPH and km/h" in any combination of upper or lower case letters.

3. Section 571.101 is amended by revising S3 to read as follows:

§ 571.101. Standard No. 101. Controls and Displays.

S3. Application. This standard applies to passenger cars, multipurpose passenger vehicles, trucks, and buses. At the option of the manufacturer, motor vehicles manufactured before September 1, 1989, may comply with the requirements of Federal Motor Vehicle Safety Standard No. 100, *Controls and Displays*, instead of the requirements of this standard, for any control, display, or illumination. If no requirements are specified in Standard No. 100 for a control, display, or illumination, none need be met as a result of this standard for motor vehicles manufactured before September 1, 1989.

Issued on March 4, 1987.

Diane K. Steed,

Administrator.

[FR Doc. 87-4901 Filed 3-4-87; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register

Vol. 52, No. 45

Monday, March 9, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272, 273, and 275

Food Stamp Program; Administration/Management

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes to amend Food Stamp Program regulations to implement certain provisions of Pub. L. 99-198, the Food Security Act of 1985, enacted on December 23, 1985. This action proposes to implement the following provisions: periodic review of the hours that food stamp offices are open; establishment and operation of fraud detection units in project areas with 5,000 or more participating households; use of other means of collecting fraud claims unless those means are not cost effective; the collection of fraud claims from unemployment compensation benefits; use of Quality Control data to identify project areas where excessive error rates impair program integrity; and distribution of Expanded Food and Nutrition Education Program information and materials to food stamp recipients.

In addition to these statutory provisions, this action proposes to require that State agencies identify at certification any household that owes outstanding payments on previously issued claim determination. As a result of a court case, the action would also modify certain requirements about notices of fair hearings. The purpose of these intended actions is to improve the administration and management of the Food Stamp Program.

DATES: Comments must be received on or before April 23, 1987.

ADDRESS: Comments should be submitted in writing to Thomas O'Connor, Supervisor, State Management Section, Family Nutrition Programs, Food and Nutrition Service,

USDA, Alexandria, Virginia, 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday), at 3101 Park Center Drive, Alexandria, Virginia, Room 716.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be directed to Mr. O'Connor at the above address or by telephone at (703) 756-3385.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Department has reviewed this action under Executive Order 12291 and Secretary's Memorandum No. 1512-1. The rule will affect the economy by less than \$100 million a year. The action will not significantly raise costs or prices for consumers, industries, government agencies or geographic regions. There will not be a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States enterprises to compete with foreign-based enterprise in domestic or export markets. Therefore, the Department has classified this action as "not major".

Executive Order 12372

The Food Stamp Program is listed in the *Catalog of Federal Domestic Assistance* under No. 10.551. For the reasons set forth in the Final rule related Notice to 7 CFR Part 3015, Subpart V (Cite 48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has also been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The changes will affect food stamp recipients and the State and local agencies which administer the program.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507),

the reporting and recordkeeping requirements contained in § 272.4(f) of this action will be submitted to the Office of Management and Budget (OMB) and would not be effective until OMB has approved them.

Background

1. Hours of Operation

The Congress enacted a provision (section 1524 of the Food Security Act of 1985, Pub. L. 99-198, 99 Stat. 1580, December 23, 1985) requiring that in establishing standards for the efficient and effective administration of the program, the Secretary include standards for periodic review of food stamp office hours to ensure that persons who are employed are adequately served. It is not the intent of the provision for the Secretary to mandate specific standards for the hours that food stamp offices shall be open. That decision remains one solely to be made by State and local food stamp agencies. Rather, the Secretary is charged with setting standards for State agencies to ensure that State agencies conduct their own reviews of the adequacy of the hours of operation of food stamp offices. (See Senate Report 99-145, 99 Cong. 1st Session, p. 268, 1985.) This assessment should be made at regular intervals and should take into consideration the number of recipients and potential recipients within the area served who are working and who are looking for work.

This proposed rule would require that State agencies review the adequacy of the hours of operation of food stamp offices annually to ensure that potential recipients and recipients who work have access to the program. The Department is not proposing any reporting requirements in this area because, as it states in the just cited report, Congress did not intend this assessment to be an administrative burden to State agencies. Instead, the State-level offices would retain all information collected from local offices for use in assessing whether or not the program is accessible in all project areas. These would be available for review should the need for a review arise. (§ 272.4(g))

2. Fraud Detection Units

The Food Security Act of 1985, in section 1526 (99 Stat. 1580) requires that fraud detection units be established and operated in project areas in which 5,000

or more households participate in the Food Stamp Program. The activities of these units would include detecting, investigating and assisting in the prosecution of program fraud.

There are approximately 250 project areas serving 5,000 or more households. Many of these project areas already have existing personnel specifically assigned to fraud detection, investigation and prosecution. Thus, this provision would not affect them.

However, some project areas serving more than 5,000 households do not have people specifically assigned to perform fraud control. The Act now requires that all project areas serving more than 5,000 households have fraud detection units.

The provision does not require that a special or separate office be established solely for this purpose, but rather that some personnel in all project areas be targeted on fraud detection, investigation, and assistance in prosecution. Those workers fulfilling this function need not work full-time in fraud detection nor work exclusively on the Food Stamp Program. The fraud detection function could be performed by persons not employed by the food stamp agency. (See § 272.4(h).) The Department believes that in some cases existing efforts will meet the standards of the provision; however, in other cases, State agencies will be required to initiate or establish broader efforts to comply with the intent of the provision.

We are concerned how project areas with more than 5,000 households which cover welfare districts or entire States, as opposed to individual counties, cities, or parishes, will accomplish the intent of this provision. The proposed rule therefore contains a special provision for treating these project areas. Where project areas with more than 5,000 households cover welfare districts or entire States, as opposed to individual counties, cities, or parishes, the State agency would work with FNS to identify those areas where fraud detection units need be established. The Department would, in consultation with the State agency, establish which (if any) parts of the project area would be required to establish fraud detection units. The Department is especially interested in receiving comments on this approach.

Upon publication of final rules on fraud detection unit requirements, the Department would notify State agencies of which project areas (except for multicounty and Statewide project areas) have 5,000 or more food stamp households participating and are subject to the fraud detection unit requirement. Each year FNS would evaluate the participation reports (FNS-388) for the month of April and update its

notification on the data in those reports. In addition, shortly after publication of the final rule, the Department would determine, in consultation with State agencies, which parts of multi-county or Statewide project areas with more than 5,000 participating households are subject to the requirement. Thereafter, the Department would notify States at the beginning of each fiscal year of any additions to or deletions from the list of areas subject to the requirement.

Current food stamp regulations at § 277.15(e)(1)(i) set the standards for the receipt of funds at the 75 percent level for investigative functions. Those same standards would apply to fraud detection units. Verification activities are a basic certification function and would continue to be funded at the 50 percent level. (272.4(h))

3. Expanded Food and Nutrition Program

Section 1530 of the Food Security Act of 1985 (99 Stat. 1581) amended section 11(f) of the Food Stamp Act to require State agencies to encourage food stamp recipients to participate in the Expanded Food and Nutrition Program (EFNEP) and, at the request of EFNEP personnel, to allow such personnel and information materials to be placed in food stamp offices.

EFNEP is an education program assisting low-income families in acquiring the knowledge, skills, attitudes, and changed behaviors necessary for nutritionally sound diets and contributing to their personal development and the improvement of total family diet and nutritional welfare. Currently, the program serves about one-third of all counties nationwide.

This proposed rule would require State agencies when requested to allow EFNEP personnel and information materials to be placed in food stamp offices wherever practicable. Thus, State agencies would have to allow EFNEP personnel to come into food stamp offices to distribute information and speak with food stamp recipients. EFNEP aides teach recipient nutrition and how to plan and stretch food coupons. State agencies would not have to make initial contact with EFNEP to request services or to request that services be expanded to new areas. State agencies are only to encourage food stamp recipients to participate in EFNEP and to make EFNEP personnel and information materials available in food stamp offices upon request wherever practicable. (7 CFR 272.5)

4. Intercept of Unemployment Compensation Benefits

a. Summary of Statutory Provisions

Section 1535 of the Food Security Act of 1985 (99 Stat. 1583) amends section 13 of the Food Stamp Act of 1977, as amended, to provide State agencies the authority to collect claims for intentional program violations (IPVs) by arranging with agencies which administer unemployment compensation (UC) to withhold amounts from UC benefits otherwise due. The Food Security Act also amends section 303(d) of the Social Security Act to authorize State agencies administering UC laws to identify UC applicants owing uncollected claims for IPVs, to deduct amounts from UC benefits and to send such amounts to State agencies administering the Food Stamp Program (FSP). Finally, it amends the Wagner-Peyser Act of 1933, as amended, to require the Secretary of Labor to assure that, if requested by FSP State agencies, UC agencies furnish those agencies certain information about employment and UC benefits.

The amendments to the Food Stamp and Social Security Acts further provide that intercepted UC benefits must be specified in an agreement with the individual involved or in a court order. The Social Security Act allows a third alternative: individuals can voluntarily specify that UC agencies deduct amounts to pay for IPVs. The amendment to the Social Security Act provides that intercepted UC benefits are to be treated for all purposes as UC benefits paid to the individual and also that FSP State agencies must reimburse UC agencies for administrative costs attributable to the intercept activities.

b. General Considerations

The Department encourages State agencies to adopt the option of intercepting UC benefits to recoup IPV claims. Implementing the option will give households another way of satisfying claims for IPVs. Use of this option will increase the amounts of claims collected for IPVs and, if appropriately publicized, should help deter individuals from committing IPVs because of heightened awareness that the FSP has means of recovering excess benefits. Administration of the procedure should be relatively easy to implement and inexpensive to operate. Costs related to the intercept procedures are eligible for Federal funding at 75 percent if a State agency's procedures are otherwise eligible for enhanced funding as specified in § 277.15(e). State agencies choosing to implement the

intercept would need to amend State UC laws to allow the deduction from US benefits otherwise payable if State law prohibits assignment of UC benefits as the Department understands is sometimes the case.

c. Intercept Procedures—Overview

These rules propose the addition of § 272.9 to the Food Stamp regulations to specify the policies for the intercept. The rules would also modify several paragraphs which would be affected by the proposed rule.

Since October 1982, Title IV-D of the Social Security Act has required State child enforcement agencies to intercept UC benefits to obtain unmet child support payments. The rules proposed here are modeled on the Title IV-D rules and the guidance provided by the Office of Child Support Enforcement (OCSE) of the Department of Health and Human Services (HHS), and by the Employment and Training Administration (ETA) of the Department of Labor (DOL).

d. Identification of Individuals Subject to Intercept

The legislation provides State agencies the authority to determine periodically whether an individual receiving UC benefits owes an IPV claim. As a first step in identifying households subject to the UC intercept, this rule proposes that FSP State agencies identify to UC agencies all household members liable for an IPV claim.

In amending the Wagner-Peyser Act, the legislation requires that, upon request of an FSP State agency, UC agencies must furnish the following information about any individual specified in the request: (1) Whether the individual is receiving, has received, or has made application for UC benefits, and the amount of any such benefit being received; (2) the current (or most recent) home address of the individual; and (3) whether the individual has refused an offer of employment and if so, a description of the employment offered, and the terms, conditions and pay for such employment. The Department does not believe that all of this information is necessary for the intercept. The rule would require that State agencies which utilize the intercept system ask UC agencies for three items: which matched individuals are receiving UC benefits and the amount of such benefits, and the current (or most recent) home address of the individuals. The rule proposes that State agencies must request information about the receipt and amount of UC benefits for all instances in order for State agencies to try to reach an agreement

with the individuals for recovering IPV claims. Information about home addresses of individuals may be more accurate than State agency records, especially about individuals in households which are no longer participating or who are in a food stamp household different from the one where the IPV was committed. This is likely to be true because individuals need to provide UC agencies their correct address in order to receive their UC benefits. The rule would not require that State agencies request information on individuals who have received or have applied for UC benefits or on refusal of employment offers. State agencies may request or accept this information depending on negotiations with UC agencies. It may be easier and less expensive for UC agencies to provide the information than to edit it out of responses, and the information may be useful to FSP State agencies for future intercepts.

The procedures for intercepting UC benefits to meet child support payments provide that IV-D agencies must develop criteria for selecting cases to pursue by means of the intercept. These criteria must be reviewed at least annually to assure that the intercept procedures are cost effective. Part of the reason for this selectivity is that DOL wants to encourage a focus on delinquent child support payments. This FSP rule does not propose such criteria for selection of IPV claims for referral to UC agencies. All such claims which are not being repaid warrant at least a referral to UC agencies.

Information about individuals subject to UC intercept may be provided to State agencies in connection with agreements under IEVS. State agencies may establish the frequency of their requests for UC benefit information as they see fit, using IEVS procedures as they determine appropriate. This approach should keep costs very low.

As mentioned in the paragraph summarizing the statutory provisions, section 1535 amends the Social Security Act to allow UC agencies to require new claimants to disclose whether the applicant owes an uncollected overissuance on an IPV claim. It makes no corresponding change to the Food Stamp Act. Legislation requiring the UC benefit intercept for child support payments requires that the UC agency ask new claimants for UC benefits if they owe child support. The UC agency then reports "yes" respondents to the IV-D agency. Both IV-D and ETA guidelines point up that this procedure may be an unnecessary expense, and FSP State agencies may also decide it is. First, as already discussed, from their

own records FSP agencies know about IPV claims which are not being repaid. Second, the proposed procedure of having FSP State agencies identify to UC agencies FSP recipients owing IPV claims would avoid the cost of a survey of all UC claimants. UC resources would be focused on identifying which of a relatively limited number of individuals owing IPV claims match their records. A typical State would have less than two percent of their caseload in these circumstances because less than two percent of food stamp households receive UC benefits. (See § 272.9(b)).

e. Notice to Households about the Intercept Procedure

The amendment to the Food Stamp Act provides State agencies the authority to intercept UC benefits by entering into agreements with individuals owing IPV claims and receiving UC benefits. As discussed later in this preamble, State agencies may initiate judicial action without first attempting to reach a voluntary agreement with an individual. Unless such judicial action is going to be taken, State agencies need to notify household about the UC intercept procedure in order to try to reach voluntary agreements. In cases of participating households with newly established IPV claims, the rule would require that the initial demand letter include a notice of the intercept method of payment. Such a notice to these household would assure that they are aware of all the options which are available to them for settling such claims. While the information which State agencies obtain from agencies in some instances may be the same as information obtained from households, the rule would require both procedures so that the State agency has information about the receipt of UC benefits independent of what the household may report. The information would then be available for use in judicial actions the State agency may take and for any second or later attempts to reach agreements with households. In cases when the State agencies know that the household is receiving UC benefits, a statement to that effect may help reach a repayment agreement. In these cases, to facilitate the intercept State agencies could include a proposed agreement with the demand letter.

Current rules for collecting inadvertent household error and IPV claims provide that participating household will have their allotments reduced if they do not agree to payment by lump sum, installments or a combination of such payments. This rule

would add to § 273.18(g) the provision that State agencies could use the intercept procedure as a means of collecting IPV claims instead of lump sum or installment payments or in combination with those repayment methods and recoupment, depending on what agreement is reached with the household. The rule would require that the notice to households with newly established IPV claims inform them about these options.

Current rules provide for the reduction in food stamp allotments of participating households which are not repaying IPV claims. State agencies may learn that nonparticipating households which are not paying IPV claims are receiving UC benefits. In these cases this rule would require that State agencies using the intercept procedures notify these households of these procedures and try to reach an agreement for a deduction. The notice would include a copy of the agreement discussed in the next section of this preamble and directions for contacting the State agency.

The rule would provide that State agencies which choose to initiate judicial action after attempting to reach a voluntary agreement with nonparticipating households advise them that judicial action may be taken should a voluntary agreement not be reached. The rule proposes that these households be given 10 days to respond to the notice about the voluntary agreement before State agencies initiate judicial action.

As already mentioned UC agencies can withhold from UC benefits amounts which individuals specify to UC agencies they want used to repay IPV claims. A difficulty with this arrangement is that these claims may have been paid or the amount of the deduction may be inappropriate. Consequently, this rule proposes that FSP State agencies choosing to make this arrangement with UC agencies have the UC agencies include on, or with the application for UC benefits, a written notice of the intercept option with the direction to UC claimants to contact the FSP State agency for further information. The rule does not propose to require this procedure because the cost charged to FSP State agencies for adding the notice to all UC applications may exceed the potential benefits of notifying the small number of individuals involved. Also, the UC agency could orally refer individuals to the FSP State agency if a UC claimant raises the issue. (See § 272.9(e).)

f. Agreements with Individuals

The rule would require that certain elements be included in the agreement with individuals. These are: (1) The total

amount to be deducted, which would generally be the amount of the claim; (2) the amount per week of UC benefits which would be deducted; and (3) the number of weeks the deduction would be made. The statute requires that the agreement specify the amount of the deductions.

Notifying the individual about the number of weeks for the deduction would be required so the individual would know how long the deduction would run. The rule would also require that the agreement include a statement for the individual to sign authorizing the UC agency to withhold the weekly amount specified. State agencies would need to indicate their own acceptance of the agreement. The rule would require such indication but not specify any procedure for it. For example, the agreement with the individual might be signed by a State official or be sent to the UC agency with a separate covering correspondence signed by the State agency. In addition, the agreement would include certain information about changes in the amounts of deductions, as discussed in the next section of this preamble. The statute requires that a copy of the agreement be provided to the UC agency. The rule would require that this be done. (See § 272.9(d).)

g. Amounts of Deductions

The State agency and individual involved would set the amounts of the weekly deduction. If the household is participating, the amount in combination with an amount otherwise being repaid, would be at least the amount which would be recovered through allotment reduction, as required by current rules. (See § 273.18(g)(3).) The rule would specify some of the considerations which are likely to affect the amount to be withheld. These are: the amount of the claim, the amount of UC benefits, the time the benefits are expected to run, other income available, and any other offsets being made from the UC benefits. One such offset of course could be child support payments. Since IV-D intercepts are *required* by law while UC intercepts for IPV claims are *allowed*, the rule would acknowledge this priority. It would also acknowledge the priority of other mandatory deductions such as recoveries of prior excess UC benefits.

Adjustments may be necessary in amounts withheld because of changes in circumstances, such as other income to the individual. This could include not only changes in earnings but also the initiation of a child support offset or a recovery of overpayments of UC benefits. Since the individual should be aware of these changes, the rule would

require that the agreement state that it is the individual's responsibility to contact the State agency if a change in the amount of the offset becomes necessary.

A deduction from a particular week's UC benefits may be a recovery of a prior excess UC benefit. Due to such deductions, it may happen that the amount scheduled to be deducted for an IPV claim cannot be satisfied. Employment and Training Administration (ETA) policy prohibits UC agencies from increasing the amount of a scheduled deduction to make up for an amount not collected. The rule would require that the agreement notify the household that the amount of a deduction may be decreased if there are insufficient UC benefits to allow the full deduction and that the number of weeks for the deduction may be correspondingly increased to complete collection of the claim. (See § 272.9(e).)

h. Notices and Receipts about Deductions

As it must for child support deductions the UC agency must provide the individual involved with a deduction for an IPV claim an initial, written notice which explains the beginning date and amount of the deduction from the weekly benefit amount. This notice may be issued with the first UC benefit check from which a deduction is made. It must explain the authority for the deduction and the UC claimant's right to appeal. Such appeals are limited to the validity of the UC agency's authority to make deductions and the accuracy of the amount deducted.

Consequently, the ETA guidelines to UC agencies recommend that those agencies advise UC benefit claimants to appeal the reasonableness or fairness of amounts deducted through FSP State agency or the courts. (See U.S. Department of Labor, Employment and Training Administration, Unemployment Insurance Program Letter No. 37-86, dated May 19, 1986, item 10(a).) Given these factors this rule makes no proposed requirement for FSP State agencies to issue notices to individuals when deductions begin.

As part of its procedures the UC agency may provide receipts of amounts deducted and other information to individuals. In the case of child support deductions, ETA points out that receipts can be a useful control on internal UC agency fraud and encourages UC agencies to obtain agreement from IV-D agencies to issue receipts. Receipts would provide a means of documenting the action taken under the agreement. The receipts would also notify individuals that action is complete, what

it was, and would provide the individuals an opportunity to compare the amounts of deductions made against the agreed-to amounts. Consequently, the rule would require that the agreement inform the individual that the State agency will provide the individual a receipt showing the total amount of deductions actually made. The content and format of the receipt and the timeframe for providing the receipt are matters left to State agency discretion. (See § 272.9(d)(4)(iii).)

i. Deductions as Income

Section 1535 of the Food Security Act of 1985 provides that any amount deducted and withheld to pay for IPV claims shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the FSP State agency as repayment of the claim. Current FSP rules include UC payments as unearned income. This rule would add that UC payments, which are counted as income, would include any amounts deducted to repay an IPV claim (See § 273.9(b)(2)(ii).)

j. Court-Ordered Intercepts

Section 1535 provides that in the absence of an agreement with an individual, State agencies may recover IPV claims by obtaining a writ, order, summons, or other similar process in the nature of garnishment from a court of competent jurisdiction to require the withholding of amounts from unemployment compensation. This rule would limit the use of court-ordered intercepts to nonparticipating households. As already discussed, participating households would be offered the option of the UC intercept as an alternative to lump sum and/or installment payments. The Food Stamp Act specifies that if a household does not agree to and keep an agreement for such voluntary repayment methods, it is subject to involuntary allotment reduction (Sec. 13(b)(1)(A)). This requirement is specified in § 273.18(d)(4) and (g) of the regulations.

The phrase "in the absence of an agreement with an individual" constrains State agencies from using a judicial procedure when an agreement for a deduction from UC benefits has been reached with an individual. It does not require as a condition for seeking or obtaining a court order or similar process that the State agency first attempt to reach such an agreement. Consequently, the rule would provide that State agencies may attempt to recover claims for IPV from nonparticipating households by obtaining judicial processes either

following attempts to reach voluntary agreements or without making such attempts. Some State laws provide for deductions for IV-D payments without requiring that IV-D agencies first seek a voluntary agreement with the individual obligated to make those payments. FSP State agencies wanting to use judicial processes should determine if any similar legislative authority is necessary in their State.

The rule would require that State agencies determine an amount to be withheld each week by considering as many of the factors considered in connection with voluntary agreements as it knows about. It would then recommend that amount to the court. The rule would require that the State agency notify the court about any mandatory deductions being taken. This would be required to help assure that the court had that information available when making its decision. If the individual involved is not notified about the withholding as part of the court proceedings, the rule would require that the State agency provide written notice. That notice would provide the informational points required for the voluntary agreement.

This will assure adequate notice to individuals. The legislation is silent about communication of court-ordered deductions to UC agencies. The rule would require that at least the information points of the voluntary agreement be provided to the UC agency and also whatever information about the court action which the UC agency may request. (See § 272.9(f).)

k. Agreement with UC Agencies

In order to intercept UC benefits, State agencies need to reach agreements with UC agencies about the particular procedures to be used. In addition to the items discussed above, the agreements need to cover reimbursement of UC agencies.

The amendment to the Social Security Act specified that the FSP State agencies must reimburse UC agencies for the costs which they incur that are attributable to repayment of IPV claims. The rule would require that the agreements cover such reimbursements which are not otherwise made, for example under IEVS agreements. The rule would also require that the agreements specify that at some agreed-to frequency UC agencies transmit to FSP State agencies amounts deducted from UC agencies and report to FSP State agencies the amounts deducted for each individual and the total amount transmitted for the period. This requirement is similar to requirements for child support deductions.

It may happen that a State agency would like to find out if an individual owing an IPV claim is receiving UC agencies in a neighboring State. In order to find out about this, an agreement with the neighboring State UC agency would be necessary. A condition for such an agreement is that the law of the neighboring State permit the intercept of UC agencies. The Department encourages State agencies choosing to implement this intercept procedure to reach agreements with UC agencies in neighboring States when circumstances and experience indicate that it would be useful to do so. (see § 272.9(g).)

5. Fair Hearings and Claim Demand Letters

Current rules on the content demand letters for claims require those letters to inform the household of its right to a fair hearing if the household disagrees with the amount of the claim, unless the household already had a fair hearing on the amount of the claim as a result of consolidation of an administrative disqualification hearing and fair hearing. A recent court decision (in the case of *Escamilla v. Nebraska*) found that a State agency demand letter, which was substantively in compliance with these rules, violated due process protections of the Constitution. The reasons were: it failed to notify households of their right to a fair hearing in any matter affecting their participation and the claim; it failed to notify households of the time limit for requesting fair hearings; it failed to clearly notify households of their right to continued benefits; and, it failed to use easily understandable language. The State agency had determined that the claim in question was due to an inadvertent household error. Under current rules, the household must either agree to repay such claims or have its allotment reduced.

The Department agrees that the rules need clarification with regard to the factors involved in the court's decision supporting opinion. Consequently, this rule proposes to require that if the claim is not the result of a fair hearing the demand letter must be accompanied by a notice of adverse action. This satisfies the court's requirements for due process notice. With respect to understandable language, the court was particularly concerned about the explanation that a fair hearing on the amount of the claim could not be requested if a consolidated disqualification-fair hearing had dealt with the amount. The rule proposes that households be notified that they can request fair hearings on the amounts of claims if such amounts were not established by a fair hearing, including

one consolidated with an administrative disqualification hearing. This will assure that households retain the right under current rules to appeal amounts of claims but will clarify that once a fair hearing has set the amount of the claim, the household is not entitled to further hearings on that issue. We have also taken this opportunity to rename the paragraph dealing with claim demand letters and to reorganize and edit it to improve its presentation of policy. (See § 273.18(d)(3).)

6. Collection of Fraud Claims

Minor changes are being proposed to § 273.18(d)(3) in regard to collection of claims. The numbering on these proposed changes does not correspond with the CFR, but with another set of proposed regulations (AFDC-Food Stamp Conformity) which are farther along in the regulations revision process.

Current Food Stamp Program regulations require State agencies to collect IPV and inadvertent household error claims from households still participating in the program by direct payments or reducing the households' monthly allotments. The claim is initiated by sending the households written demand letters in accordance with program rules. If the household does not respond to the State agency's written demand letter, the State agency may choose to take other collection actions against the household.

Section 1534 of the Food Security Act of 1985 (99 Stat. 1583) amended section 13(b)(1)(B) of the Food Stamp Act to mandate that State agencies use some other means of collection (e.g., collection agents) to recover IPV claims if they cannot be collected through direct payments or allotment reductions, unless the State agency can demonstrate that it would not be cost effective to do so. Recoupment remains the best tool for collecting claims against households participating in the program. The alternative methods for collecting claims will be used primarily to collect claims from households which are no longer participating in the program. It is expected that this flexibility and authority would enhance the State agencies' IPV claims collection activity. (§ 273.18(d)(4)(iii))

7. Monitoring Claims Against Households

The current regulations continue monitoring requirements to ensure that outstanding claims are collected. Collecting claims from currently participating households must be a priority since collections from these households should have the greatest success rates. A March 1986 Report to

the Congress from the United States General Accounting Office pointed out that some State agencies are not effectively identifying households at certification who have outstanding claims. (GAO/RCED-86-17). In order to rectify this problem, this proposal would require that State agencies identify at certification any household that owes outstanding payments on a previously issued claim determination and take appropriate action against such households.

The Department does not propose to prescribe any particular method to implement the requirement. Instead, we propose to give State agencies flexibility to develop systems conducive to their capabilities which will ensure identification of households with outstanding claims at certification. (§ 273.18(k))

8. Geographical Error-Prone Profiles

Section 1539 (99 Stat. 1588) of the Food Security Act authorizes the Secretary to use quality control data to identify project areas within States that have payment error rates that are impairing the integrity of the program. The legislation, further, gives the Secretary the authority to require a State agency to "... carry out new or modified procedures for the certification of households ... in error prone locales if the Secretary determines such procedures would be a cost effective way to improve the program's integrity. Finally, the provision requires the Secretary to report annually to Congress.

Many States routinely use quality control data to identify local offices or geographic areas within the State with above average error rates. In many instances, however, the quality control sample is too small to support meaningful analysis. In recognition of this limitation, the Department proposes to exercise the authority contained in section 1539 of the Food Security Act in several stages.

First, the Department will analyze State quality control data each year to identify project areas in which the reported payment error rate is either significantly greater than the State average or greater than the 5 percent national payment error rate goal. This analysis will be based on standard statistical hypothesis testing techniques that account for the uncertainty associated with small samples. Second, the Department will inform State agencies of the project areas identified in the first step. If States have already identified these areas as error prone and taken appropriate corrective actions to address problems in these areas, no

further action is required. If these project areas have not been designated as error prone or if appropriate corrective actions have not been developed, then State agencies will be required to develop such actions and include them in the corrective action plan as required by Part 275 of the regulations.

The Department's authority to require new or modified certification procedures under this provision will be exercised only in those instances when a State agency fails to take an appropriate corrective action. If that failure is determined to impair the integrity of the program and a cost effective alternative is available, the Department may require the State agency to implement the new or modified procedure.

The Department remains committed to the principle that the best corrective action tends to be developed and implemented by people closest to the problem needing correction. However, the Department also believes that there may be situations when adequate, cost-effective corrective action is not taken and, therefore, intervention is appropriate.

The rules proposed here would not require any separate reporting requirement through which State agencies need to inform the Department of their corrective action plans. Rather, the rules would require that corrective actions be included in State agencies' corrective action plans currently required by Part 275 of the regulations. This entire procedure becomes a part of the Performance Reporting System. (§ 275.15)

9. Implementation

The provisions of this rule relating to the Expanded Food and Nutrition Education Program, the collection of fraud claims, the monitoring of claims against households; notice of fair hearings, and the results of geographic error prone profiles would be effective 30 days after the date of publication of the final rule and implemented no later than 120 days after the date of publication of the final rule. The Department is proposing that the provision requiring the establishment of fraud detection units be implemented prior to September 30, 1987. State agencies would be required to submit a list of project areas subject to the requirement by April 1, 1987. This would allow State agencies six months to set up fraud units or realign staff. State agencies would be required to complete the first review of the hours that food stamp offices are open no later than September 30, 1987.

The legislation does not set a date by which State agencies must exercise their option to implement the UC intercept. The legislation does require that final rules be published by April 1, 1987. We encourage State agencies to use the April 1, 1987 date for planning that implementation.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant program-social programs, Reports and recordkeeping requirements.

7 CFR Part 273

Administration practice and procedures, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 275

Administrative practice and procedures, Food stamps, Reporting and recordkeeping requirements

Therefore, 7 CFR Parts 272, 273 and 275 are proposed to be amended as follows:

1. The authority citation for Parts 272, 273 and 275 continues to read as follows:

Authority: 7 U.S.C. 2011-2029.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.2 the seventh sentence of paragraph (a)(2) is revised, and a new paragraph (d)(1)(v) is added. The revision and addition read as follows:

§ 272.2 Plan of operation.

(a) *General purpose and content.* * * *

(2) * * * The Plan's attachments include the Quality Control Sample Plan, the Disaster Plan (currently reserved), the optional Nutrition Education Plan, the plan for the State Income and Eligibility System, and the optional plan for intercepting Unemployment Compensation (UC) benefits for collecting claims for intentional program violations. * * *

(d) *Planning documents.* (1) * * *

(v) A plan for intercepting UC benefits for collecting claims for intentional program violations as specified in § 272.9 of this Part if the State agency elects to use that procedure.

3. In § 272.4, paragraph (g) and (h) are added to read as follows:

§ 272.4 Program administration and personnel requirements.

* * *

(g) *Hours of Operation.* State agencies shall be responsible for determining the hours that food stamp offices shall be open. Annually, State agencies shall review the hours of operation of food stamp offices to ensure that the needs of recipients who work are adequately met. Based on the results of the reviews, State agencies may find it necessary to change the hours that food stamp offices are open to meet the needs of such recipients. The results of these reviews shall be retained at the State level for review by FNS.

(h) *Fraud detection units.* State agencies shall establish and operate fraud detection units in all project areas in which 5,000 or more household participate in the Food Stamp Program. The fraud detection unit shall be responsible for detecting, investigating and assisting in the prosecution of program fraud. These units need not be physically separate or distinct. The workers fulfilling this function need not work full-time in fraud detection nor work exclusively on the Food Stamp Program. The fraud detection function may be performed by persons not employed by the State agency.

4. In § 272.5, a new paragraph (b)(1)(iv) is added to read as follows:

§ 272.5 Program information activities.

* * *

(b) *Minimum requirements.* * * *

(1) * * *

(iv) State agencies shall encourage program participants to participate in the Expanded Food and Nutrition Education Program (EFNEP) and, wherever practicable, allow personnel to come into food stamp offices to distribute informational materials and speak with food stamp recipients.

* * *

5. A new § 272.9 is added to read as follows:

§ 272.9 Intercept of unemployment compensation benefits.

(a) *General.* This section provides for the intercept of unemployment compensation (UC) benefits to collect claims for intentional program violations as defined in § 272.16(c). State agencies may not conduct such intercepts unless they have an FNS approved attachment to their Plan of Operation as required by § 272.2(d)(v). State agencies with such approved procedures shall use those approved procedures.

(b) *Identification of households subject to the intercept.* State agencies shall identify households subject to interception of UC benefits by:

(1) Identifying household members who owe claims for intentional program violations as specified in § 273.18(a);

(2) Providing identifying information to agencies administering UC benefits about any such individuals who have not been referred under the State income and eligibility verification (IEVS) requirements in § 272.8; and

(3) Requesting that the UC agency provide information in their files about any such individuals, which requests shall include:

(i) Whether the individual is receiving UC benefits;

(ii) The amount of any such benefits; and

(iii) The current (or most recent) home address of the individual.

(c) *Notices about intercept procedures.* (1) State agencies shall notify households about the intercept of UC benefits as follows:

(i) State agencies shall notify liable, participating households about the UC intercept procedures in the initial demand letter sent in accordance with § 272.18(d)(3). This letter must include an explanation that the household can arrange to use the intercept alone or in combination with other repayment methods and reduction in food coupon allotments;

(ii) When State agencies learn that nonparticipating households which are liable for intentional program violation claims are not repaying their claims, State agencies shall notify the households of the intercept method unless the judicial action specified in paragraph (f) will be taken without attempting to reach a voluntary agreement. Notices to these households shall provide a copy of the agreement specified in paragraph (d) of this section and directions for contacting the State agency. If the State agency plans to initiate a judicial process should these households not agree voluntarily to the intercept, the notice shall advise such households that judicial action will be initiated unless the household contacts the State agency within 10 days of receipt of the notice.

(2) As part of the agreement with UC agencies specified in paragraph (g), State agencies may arrange for UC agencies to provide UC claimants a notice of the intercept option with the directions about how to contact the State agency for further information to be included on or with the application for UC benefits.

(d) *Agreements with individuals.* State agencies may arrange with households for deductions from UC benefits by executing agreements with individuals receiving UC benefits. Copies of agreements with individuals shall be provided UC agencies specified

in paragraph (g) of this section. The agreements shall include:

- (1) The total amount to be deducted from UC benefits otherwise due;
- (2) The amount of UC benefits to be deducted each week;
- (3) The number of weeks the deduction will be made;
- (4) Statements that:
 - (i) It is the individual's responsibility to notify the State agency if a change in the amount of the deduction is necessary, for example because of a change of earnings as in other circumstances affecting income;
 - (ii) The amount of a weekly deduction may be decreased if there are insufficient UC benefits to allow the full deduction and that the number of weeks for the deduction may be correspondingly increased to complete collection; and
 - (iii) The State agency will provide the individual a receipt for the total amount of deductions actually made;
- (5) The signature of the individual agreeing to the deductions;
- (6) Either on the agreement or on a transmittal to the UC agency, a signature of a State agency official indicating concurrence with the agreement.

(e) *Amounts of deductions.* The amount of the weekly deduction shall be subject to agreement by the individual and State agency, provided that for participating households the amounts, in combination with any other repayment methods, results in a scheduled repayment rate at least equivalent to what would be repaid through the allotment reduction specified in § 273.18(g)(4). The amount of the deduction shall be considered as income as specified in § 273.9(b)(2)(ii). The determination of the amount shall take into account such factors as the total amount of the claim, the amount of weekly UC benefits and the number of weeks they are expected to be paid, other income available to the individual, and any other deductions from the individual's UC benefits, allowing priority to such mandatory deductions as those for child support payments required by the Social Security Act and recoveries of prior excess UC benefits.

(f) *Court-ordered deductions.* State agencies may attempt to recover claims for intentional program violations from nonparticipating households by obtaining a writ, order, summons, or other similar process in the nature of garnishment from a court of competent jurisdiction to require the withholding of amounts from unemployment compensation. Subject to State and local law, State agencies may seek such judicial actions subsequent to

attempting to reach a voluntary agreement discussed in paragraph (d) of this section or may seek judicial action without making such attempts.

(1) The State agency shall determine an amount to be withheld each week by considering as many of the factors listed in paragraph (e) of this section as it knows about and shall recommend that amount to the court. The State agency shall also notify the court of any mandatory deductions from an individual's UC benefits which it knows about.

(2) The State agency shall assure that any individual against whom a court-ordered deduction is processed is notified about:

- (i) The total amount to be deducted from UC benefits otherwise due;
- (ii) The amount of UC benefits to be deducted each week; and
- (iii) The number of weeks the deduction will be made.

(3) The State agency shall provide the UC agency the information specified in paragraph (f)(1) of this section and a copy of the court order or a summary as the UC agency may request.

(g) *Agreements with UC agencies.* State agencies using the procedures specified in this section shall execute written agreements with UC agencies, including UC agencies in other States when circumstances and experience indicate that would be useful. The agreements shall cover:

- (1) The requirements specified in this section which affect both agencies such as the identifying information the State agency will provide, the frequency of and the procedures for exchanging information;
- (2) The particular costs, both initial and ongoing, for which the State agency will reimburse the UC agency. These costs shall be limited to those attributable to the repayment of claims for intentional program violations for which the State agency does not otherwise reimburse the UC agency; and
- (3) The frequency of transmittals of deductions from UC benefits to the State agency and of reports of amounts deducted for each individual and the total amount transmitted.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

6. In § 273.9, paragraph (b)(2)(ii) is revised to read as follows:

§ 273.9 Income and deductions.

- (b) Definition of income. * * *
- (2) * * *
- (ii) Annuities; pensions; retirement; veteran's or disability benefits; worker's

or unemployment compensation, including any amounts deducted to repay claims for intentional program violations as provided in § 272.9; old age, survivors of social security benefits; strike benefits; foster care payments for children or adults; gross income minus the cost of doing business derived from rental property in which a household member is not actively engaged in the management of the property at least 20 hours a week.

* * * * *

7. In § 273.18, paragraph (d)(3) is revised, paragraph (d)(4)(iii) is amended by revising the first sentence, paragraph (g)(3) is redesignated as paragraph (g)(4) and new paragraphs (g)(3) and (k)(5) are added. The revisions and the addition read as follows:

§ 273.18 Claims against households.

* * * * *

(d) *Collecting claims against households.* * * *

(3) *Claim demand letter.* Each State agency shall develop a written demand letter for initiating collection action on claims which contains the information required by this paragraph. A model letter is available from FNS. If the household has not had a fair hearing on the claim, along with the demand letter the State agency shall provide a notice of adverse action, as specified in § 273.13.

(i) The demand letter shall inform the household of the amount owed, the reason for the claim, the period of time the claim covers, any offsetting that was done to reduce the claim and how the household may pay the claim. If the amount of the claim was not established at a fair hearing, including one consolidated with an administrative disqualification hearing, the letter shall notify the household that it can request a fair hearing on the amount of the claim.

(ii) If there is an individual or organization available that provides free legal representation, the demand letter shall advise the household of the availability of the service.

(iii) For inadvertent household error and intentional program violation claims, the letter shall inform the household of the length of time it has both to decide which method of repayment it will choose and to inform the state agency of its decision, and the letter shall inform the household of the fact that its allotments will be reduced if the household fails to agree to make restitution.

(iv) If the State agency has implemented the intercept of unemployment compensation (UC)

benefits as specified in paragraph (g)(3) of this section, the letter shall inform the household of this method of repayment for claims for intentional program violations.

(v) For administrative error claims, the letter shall inform the household of the availability of allotment reduction as a method of repayment if the household prefers to use this method.

(vi) The letter shall inform any household against which the State agency has initiated collection action of its right to request renegotiation of any repayment schedule to which the household has agreed in accordance with paragraph (g)(2) of this section should the household's economic circumstances change.

(vii) The demand letter shall provide space for the household to indicate the method of repayment and provide a signature block.

(4) *Action against households which fail to respond.* * * *

(iii) The State agency shall pursue other collection actions, as appropriate, to obtain restitution of a claim against any household which fails to respond to a written demand letter for repayment of any intentional program violation claim unless the State agency demonstrates to the satisfaction of the Secretary that such other means are not cost effective. * * *

(g) *Method of collecting payments.* * * *

(3) *Intercept of unemployment compensation benefits.* State agencies which have an approved attachment to their Plan of Operation covering the intercept of unemployment compensation (UC) benefits for the collection of claims for intentional program violations may arrange for such intercept as provided in § 272.9 of this Part. Collections made by such intercepts shall be treated as lump sum or installment payments as discussed in paragraph (g)(1) and (2) of this section. * * *

(k) *Accounting procedures.* * * *

(5) Identify at certification any household that owes outstanding payments on a previously issued claim determination. * * *

PART 275—PERFORMANCE REPORTING SYSTEM

8. In § 275.15, a new paragraph (g) is added to read as follows:

§ 275.15 Data management.

* * *

(g) *Identification of High Error Project Areas/Counties/Local offices* FNS will

use quality control information to determine which project areas/counties/or local offices have reported payment error rates that are either significantly greater than the State average or greater than the 5 percent national payment error rate goal of the Food Stamp Program. When FNS notifies a State agency that a "high error" area exists the State agency shall insure that corrective action is developed and reported in accordance with the provisions of § 275.17. If a State agency's corrective action plan fails to address problems in such areas, FNS may require a State agency to adopt new or modified procedures for the certification of households if the alternative procedures are costs-effective.

Dated: March 3, 1987.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 87-4856 Filed 3-6-87; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270 and 274

[Release No. IC-15586; File No. S7-6-87]

Exemptive Relief for Variable Annuity and Flexible Premium Variable Life Insurance Separate Accounts Relating to Deduction of Certain Charges from Account Assets

AGENCY: Securities and Exchange Commission.

ACTION: Reproposal of rule and proposal of rule and form amendments.

SUMMARY: The Commission is reproposing a rule under the Investment Company Act of 1940 ("Act") to permit variable annuity separate accounts to deduct certain risk charges from account assets. The purpose of the rule is to eliminate the routine need for applications for exemptive orders allowing these deductions. The Commission is also proposing corresponding amendments to certain provisions of a temporary rule under the Act. These provisions provide flexible premium variable life insurance separate accounts exemptions from the Act needed to deduct risk charges from account assets. The amendments would conform the temporary rule to the reproposed annuity separate account rule. The Commission also proposing amendments to certain registration forms used by variable annuity and variable life insurance separate accounts to require enhanced disclosure

of the nature and extent of risk charge deductions. The Commission is also reproposing related technical amendments to one of the general rules under the Act.

DATE: Comments must be received by June 8, 1987.

ADDRESSES: All comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Washington, DC 20549 and should refer to file number S7-6-87. All submissions will be available for public inspection at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: David S. Goldstein, Attorney (202) 272-2622, Office of Insurance Products and Legal Compliance, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today is reproposing rule 26a-3 originally published at 49 FR 40879 under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] ("Act"), which would permit registered insurance company separate accounts (sometimes referred to as "annuity accounts")¹ that issue and sell variable annuity contracts ("annuity contracts") to deduct mortality risk charges and expense risk charges (collectively, "risk charges") from annuity account assets.²

Rule 26a-3 would exempt annuity accounts and the depositors of and principal underwriters for annuity accounts from the provisions of sections 26(a)(2)(C) and 27(c)(2) of the Act [15 U.S.C. 80a-26(a)(2)(C) and 15 U.S.C. 80a-27(c)(2)] in connection with the deduction of risk charges from account assets.³ The purpose of the rule is to

¹ Separate accounts may be registered under the Act either as management investment companies ("management accounts") or as unit investment trusts ("trust accounts"). Trust accounts purchase shares in an underlying investment medium, typically an open-end management investment company ("underlying fund").

² The rule also exempts any insurance company sponsor of, or underwriter for, such accounts.

³ Section 27(c)(2) of the Act, as relevant here, makes it unlawful for any separate account to sell a variable annuity contract unless purchase payments related to it are deposited with a trustee or custodian in accordance with an agreement containing in substance the requirements of section 26(a). Section 26(a)(2)(C), in turn, generally prohibits payments from the separate account to the insurer in excess of such reasonable amounts as the Commission may prescribe as compensation for bookkeeping or administrative services.

eliminate the routine need for individual exemptive applications in this area.

The Commission today is also proposing amendments to subparagraph (b)(13)(iii)(F) ("subparagraph (F)") of rule 6e-3(T) under the Act [17 CFR 270.6e-3(T)] to conform the terms of exemptive relief found in this subparagraph to those of the exemptions in rule 26a-3, as repropoed.⁴ Rule 6e-3(T) provides exemptions from several provisions of the Act and rules under it to life insurance companies and their registered separate accounts ("FPVLI accounts") that jointly issue and sell flexible premium variable life insurance contracts ("flexible contracts").⁵ Subparagraph (F) provides exemptions from the provisions of sections 26(a)(2)(C) and 27(c)(2) of the Act to permit FPVLI accounts to deduct risk charges.⁶ Subparagraph (F) also permits the deduction of charges paid to the insurance company for assuming, under some flexible contracts, the risk of any guaranteed death benefit. The terms of subparagraph (F) were modeled on those of rule 26a-3, as originally proposed.⁷ Consequently, the changes in rule 26a-3, as now repropoed, would require corresponding changes to subparagraph (F).

The Commission today is also proposing amendments to forms N-3, N-4 and N-8B-2 [17 CFR 274.11b, 274.11c, and 274.12] to require more specific disclosure concerning the use of proceeds from risk charges. Annuity accounts and FPVLI accounts use these forms for investment company registration statements required by the Act and for registration of annuity contracts as required by the Securities Act of 1933 ("1933 Act") [15 U.S.C. 77h(a)].⁸ Flexible contracts are

registered on form S-6 (which incorporates pertinent disclosure requirements by reference to form N-8B-2) under the 1933 Act.

Finally, the Commission is repropoing several related technical amendments to rule 0-1(e) [17 CFR 270.0-1(e)] of its General Rules and Regulations under the Act.

Summary of Changes From Original Proposal

This section of the release provides a shorthand comparison of rule 26a-3 as originally proposed with the version now repropoed.⁹ As originally proposed, rule 26a-3 would have required a registrant to:

- (1) Represent that its risk charge is either within the range of industry practice or reasonable in relation to the risks assumed under the contract;
- (2) Explain the methodology used to support this representation;
- (3) Represent either that proceeds from explicit sales loads will cover distribution costs or else that the insurance company has concluded that there exists a reasonable likelihood that the distribution financing arrangement for the separate account will benefit the account and contractholders;
- (4) Maintain and make available to the Commission memoranda or other documentation setting forth the basis for certain of the above representations and explanations;
- (5) Represent that management separate accounts and funds underlying unit investment trust separate accounts will have a board of directors, a majority of whom are not "interested persons," formulate and approve any distribution plan under rule 12b-1 of the Act; and
- (6) Not allow new or increased mortality and expense risk charges to be imposed in a registration statement that became effective by lapse of time.

As originally proposed, the rule would have exempted registered charges, from section 12(b) of the Act [15 U.S.C. 80a-12(b)] and rule 12b-1 thereunder.

As now repropoed, rule 26a-3 retains the section 12b and rule 12b-1 exemption, and conditions (2) and (4) above but does not contain conditions (3), (5) and (6). The repropoed rule changes condition (1) to require all

management accounts. Annuity contracts, as securities issued by the annuity accounts, are registered also under the 1933 Act on form N-3 or N-4 as appropriate.

⁹ This summary does not provide the full text or a complete articulation of the requirements of the proposed or repropoed rules. Instead it is a summation of the net effect of these rules in combination with other existing disclosures and regulatory requirements.

registrants to represent that their risk charge is designed only to cover the cost of bona fide mortality and administrative expense risks and that the level of the risk charge is reasonable in relation to the mortality and administrative expense risks assumed under the contract. Proposed amendments to registration statement forms used by separate accounts would enhance disclosure regarding the use of proceeds from risk charges.

Background

Rule 26a-3 is being repropoed as the last significant step in the Commission's efforts to reduce or eliminate applications filed by annuity separate accounts for routine "start-up" exemptions under the Act. The original release proposing rule 26a-3 fully discusses the background and reasons for proposing the rule.¹⁰ The amendments to subparagraph (F) are being proposed to ensure that consistent standards apply to substantially similar activities among different separate account registrants. The proposed amendments to forms N-3, N-4 and N-8B-2 will clarify disclosure requirements necessary to ensure that contractholders receive information sufficient to enable them to evaluate the impact of risk charges on their investment.

The Commission received four letters commenting on rule 26a-3, as first proposed. In response to its request for comments on rule 6e-3(T), the Commission received nine comment letters addressing subparagraph (F). Three of the nine either reiterated or expanded on comments previously submitted on proposed rule 26-3. Comments received on the relevant portions of subparagraph (F) were

⁴ The proposed changes to rule 6e-3(T) would not be made until the time of adoption of rule 26a-3.

⁵ Flexible contracts are variable life insurance contracts that provide for premium payments that are "flexible," i.e., determined by the contractholder rather than by the insurer, as in the case with most other types of whole life insurance. For a more complete description of the characteristics of a typical flexible contract, see Investment Company Act Release No. 14234 (Nov. 14, 1984) [48 FR 47208 (Dec. 3, 1984)], adopting rule 6a-3(T) ("rule 6e-3(T) release"). See also Investment Company Act Release No. 13632 (Nov. 23, 1983) [48 FR 54043 (Nov. 30, 1983)], in which the Commission requested public comment on issues arising under the Act relating to flexible contracts.

⁶ Sections 26(a)(2)(C) and 27(c)(2) of the Act affect FPVLI accounts in the same ways that they affect annuity accounts. See *supra* note 3.

⁷ See the rule 6e-3(T) release at Section II.B.12.c.

⁸ Annuity accounts and FPVLI accounts normally register under the Act as investment companies. Annuity accounts register on form N-3 (management accounts) or form N-4 (trust accounts) while FPVLI accounts use form N-8B-2 (trust accounts) while FPVLI accounts. As a matter of practice, no FPVLI accounts have registered as

¹⁰ Investment Company Act Release No. 14190 (October 11, 1984) [49 FR 48079 (Oct. 18, 1984)]. Because risk charges do not represent compensation for performing bookkeeping or other administrative services, annuity separate accounts and FPVLI accounts may only pay risk charges out of account assets pursuant to an exemptive order of the Commission. Historically, exemptive orders in connection with risk charges have been granted on the grounds that they relate to traditional and necessary insurance characteristics of the product and, when reasonable in amount, do not lead to abusive or "hidden" profits of the type section 26(a) was intended to prevent. See *infra* note 17. The Division in its review of individual risk charges exemptive applications has focused on ensuring that any risk charge bears a reasonable relationship to the insurance risks actually assumed under the contract and that investors receive adequate disclosure regarding the possible use of the charge for non-insurance purposes. Where the staff has been able to conclude that risk charges bear a reasonable relationship to insurance, it routinely has granted exemptions under the criteria set forth in section 6(c) of the Act. The rule as repropoed, follows this principle.

equally applicable to proposed rule 26a-3.

The commentators unanimously supported the basic concept of proposed rule 26a-3. One insurance company commentator recommended that the Commission adopt the rule as proposed. It stated that the proposal would codify previously issued exemptions from the Act, and that elimination of the application process in this area would be replaced by a sound approach that still maintained important safeguards of the Act. Several other commentators, however, questioned certain aspects of the proposal (and corresponding portions of subparagraph (F)). These commentators focused particularly on paragraph (b) of proposed rule 26a-3 and on the proposed rule's relationship with rule 12b-1 under the Act [17 CFR 270.12b-1].¹¹

The Commission is reproposing rule 26a-3 primarily because of substantial modifications made in response to the comments. Additionally, the Commission is proposing conforming amendments to subparagraph (F). In light of these modifications, the Commission is also proposing to clarify disclosure standards in forms N-3, N-4 and N-8B-2.¹²

Discussion

Paragraph (b) of the rule

Paragraph (b) of proposed rule 26a-3 would have prohibited a separate account or insurer from relying on the rule if the registration statement, or amendment to it, that initially disclosed a risk charge (or any increase in the charge) had become effective by lapse of time under section 8(a) of the 1933 Act or rule 486 under it [17 CFR 230.486].¹³ This paragraph was intended

to work together with paragraphs (a)(2)(i) and (ii) of the original proposal which would have required registrants to represent either that the risk charges were within the range of industry practice for comparable annuity contracts or that the charges were reasonable in relation to the risks assumed by the insurer.¹⁴

Commentators objected to proposed paragraph (b) for several reasons. They asserted that the paragraph would result in ratemaking by the Commission and its staff and that the Commission lacked the jurisdiction to regulate the level of insurance charges. Commentators also argued that the procedures of the paragraph would violate section 40 of the Act [15 U.S.C. 80a-39], section 8(a) of the 1933 Act, and the Administrative Procedure Act [5 U.S.C. 551 et seq.]. Finally, they argued that a review of risk charges in the disclosure process is outside the expertise of the staff and would defeat the purpose of an exemptive rule.

The Commission is now proposing to delete the original paragraph (b). It has determined that reproposed rule 26a-3, in combination with enhanced disclosure resulting from the proposed amendments to the forms, would provide sufficient safeguards against the abuse to which section 26 and 27 are directed. For example, now paragraph (a)(2) of the proposed rule would require registrants to represent that the risk charge is designed only to cover the cost of bona fide mortality and administrative expense risks.¹⁵ In addition, as described in more detail below, for registrants with risk charges above the range of industry practice for comparable annuity contracts, the proposed form amendments would require certain disclosures regarding the level of risk charges.¹⁶

Several commentators asserted that the original paragraph (b) was designed not only to enable the Commission staff to review risk charge disclosure, but also to regulate the amount of these charges. These commentators argue that the Commission lacks jurisdiction over risk charges because such charges relate strictly to the business of insurance. In this regard, one commentator cited the McCarran-Ferguson Act [15 U.S.C. Sections 1011-1015 (1976)], which provides that federal statutes do not apply to the business of insurance, except to the extent that a state fails to regulate a particular aspect of insurance

or Congress specifically chooses to do so. According to this commentator, neither of the above factors are present with respect to risk charges.

The Commission disagrees with the comments suggesting that it lacks jurisdiction to adopt rules relating to charges taken out of a unit investment trust. First, the inherent potential for conflict of interest when these charges are paid to an affiliate and the explicit language of Section 26(a)(2) make it plain that the section applies to all charges, even ones for insurance-related purposes. Second, the primary question with regard to mortality and expense risk charges is whether they are "insurance" charges. As explained in the release proposing rule 26a-3, the Commission does not seek to regulate the magnitude of insurance charges. Paragraph (b) of the proposal was intended solely to complement paragraphs (a)(2)(i) and (a)(2)(ii), as initially proposed, to ensure that the risk charges cover bona fide insurance risks or support bona fide insurance activities. If risk charges exceed the amount fairly attributable to the insurance risks they cover, then they would no longer be "insurance charges" and would, therefore, fall outside even an expansive reading of the ambit of the McCarran-Ferguson Act. These excess amounts would be "hidden charges" of the types prohibited by sections 26 and 27 of the Act,¹⁷ and might also constitute distribution charges subject to the limitations of section 27 and/or section 12(b).

Paragraph (a)(2)

Paragraph (a)(2) of proposed rule 26a-3 would have required a registrant using the rule, in its registration statement, to make one of two alternative representations: (1) That its risk charge is within the range of industry practice, or (2) that its risk charge is reasonable in relation to the risks assumed.¹⁸

¹⁷ See *supra* notes 3 and 10. In enacting section 26(a), Congress sought to limit the ability of a trust sponsor to derive fees from the trust and to prohibit the sponsor from "reaping hidden profits" through use of such fees. *H.R. Rep. No. 2639*, 76th Cong., 3d Sess. 22 (1940). See also *S. Rep. No. 1775*, 76th Cong., 3d Sess. 8, 18 (1940). Failure to disclose the true nature of risk charges would also raise questions of liability under the antifraud provisions of the 1933 Act.

¹⁸ As explained in note 10 of the proposing release, the second representation was historically made in applications for exemptive relief by companies unable to identify a statistically meaningful number of comparable products, or by companies whose particular circumstances made a meaningful comparison impossible.

¹¹ Rule 12b-1 is discussed *infra*, beginning with the text accompanying note 21.

¹² Except where otherwise noted, references to proposed rule 26a-3 in the discussion below also relate to the corresponding portions of subparagraph (F). Accordingly, unless otherwise specified, the term "separate account" herein encompasses both annuity separate accounts and FPVLI accounts, and the term "insurer" refers to insurance company sponsors of both types of accounts. Likewise, because the proposed changes to forms N-3, N-4 and N-8B-2 are substantially identical, references to "the forms" or "form amendments" will, unless otherwise noted, relate to all three.

¹³ Section 8(a) of the 1933 Act generally permits registration statements to become effective automatically on the twentieth day after filing, unless a pre-effective amendment is filed before the twentieth day. Rule 486 under the 1933 Act governs the effective dates of post-effective amendments to separate account registration statements, including the dates upon which those amendments may become effective by lapse of time.

¹⁴ For FPVLI accounts, the "industry practice" standard requires comparison of risk charges with those of other flexible contracts.

¹⁵ Paragraph (a)(2) of the reproposed rule.

¹⁶ See text accompanying note 25, *infra*.

Reproposed rule 26a-3 differs from the proposed version in that representation (1) is not required of any registrants and representation (2) is required of all registrants. The removal of representation (1) should not diminish investor protection because of the new disclosure requirements discussed below and because representation (2) sufficiently embodies the purposes of sections 26 and 27. The Commission has also decided to add the requirement that all registrants represent that the risk charge is designed only to cover the cost of bona fide mortality and administrative expense risks.¹⁹ This representation makes explicit the fundamental premise of individual risk charge exemptive applications.

The Commission believes that prospective investors are entitled to enough information to allow evaluation of a risk charge, especially its size, by comparative analysis of competing products. To this end, amendments are proposed to registration statement forms which would require prospectus disclosure of the fact that the charge is above the range of industry practice, and of the essential facts necessitating a charge of this level. Under the amended forms' disclosure requirements, a registrant would also have to disclose in its prospectus the extent to which the insurer realizes positive cash flows as a result of risk charges, as well as the extent to which the insurer uses such cash flows to pay distribution expenses. These disclosures would be updated in post-effective amendments.

The reproposed rule would eliminate any staff need to administer sections 26 and 27 in a manner that might require review of actuarial determinations in the context of the registration process. That is, the proposed form amendments would require that registrants disclose, where appropriate, why their risk charges are above the range of industry practice. The majority of registrants relying on the rule, however, would have mortality and expense risk charges within the range of industry practice and thus would not be subject to the additional disclosure requirements. In addition, the proposed form amendments would require that registrants fully disclose the extent to which proceeds from risk charges may be used for a non-insurance purpose. This would facilitate the application of the sales load limitations of section 27.²⁰

¹⁹ For flexible contracts, guaranteed death benefit risks would also be included.

²⁰ An insurer may, of course, pay for distribution out of its general profits. However, if it sets risk charges at levels outside the range of industry

Relationship of Rule 26a-3 with Rule 12b-1

Proposed rule 26a-3 related to rule 12b-1 under the Act in two ways.²¹ First, rule 12b-1 served as a model for certain of the representations in the proposed rule. Second, the proposed rule would have affected the composition of the board of directors of any separate account or underlying fund that adopted a 12b-1 plan.

Paragraph (a)(4) of proposed rule 26a-3 would have required a registrant to make one of two alternative representations: (1) That the proceeds from explicit sales loads would be sufficient to cover the expected costs of distributing the contracts;²² or (ii) that, if such sales loads were insufficient, the insurer would have concluded that there was a reasonable likelihood that the account's distribution financing arrangement would benefit the separate account and contractholders.²³ The second of these two representations was based on similar provision in rule 12b-1 under the Act, and recognized the possibility that any shortfall in compensation for distribution costs might be recovered indirectly through risk charges.²⁴

The reproposed rule does not require these representations. Instead, the proposed form amendments address directly the possible use of cash flows from risk charges to finance distribution. Where the risk charges are above the

practice to recover distribution shortfalls, that portion of the risk charge proceeds that is designed to cover distribution costs must be disclosed as such and must be counted along with explicit sales charges for purposes of measuring compliance with section 27.

²¹ Rule 12b-1 prohibits any open-end management investment company, including any management account, from directly or indirectly financing distribution of the company's securities, except in compliance with the rule's requirements. The rule requires, among other things, that a company formulate a written plan (sometimes referred to as a "rule 12b-1 plan") describing all material aspects of the proposed distribution arrangement. It also requires that the plan be approved initially by the company's securityholders, by its directors, and by a majority of its directors who are not "interested persons" of the company, as defined in section 2(a)(19) of the Act [15 U.S.C. 80a-2(a)(19)]. The company may implement or continue a plan only if the directors, who are required to vote annually on continuation, conclude, in the exercise of their reasonable business judgment and in light of their fiduciary duties under state law and under the Act, that there is a reasonable likelihood that implementation or continuation of the plan will be benefit the company and its securityholders.

²² Paragraph (a)(4)(i).

²³ Paragraph (a)(4)(ii)(A).

²⁴ Of course, at some point the risk charges may be so high as to suggest that they are being used as a substitute for an express sales load.

range of industry practice the proposed form amendments would require insurers to analyze whether revenues from risk charges exceed actual costs of meeting mortality and administrative expenses guarantees,²⁵ and, if so, whether the resulting positive cash flow finances distribution expenses.²⁶ If the insurer uses, or intends to use, the early positive cash flows from mortality and expense risk charges to finance distribution expenses,²⁷ the proposed form amendments would require disclosure of this fact.²⁸

²⁵ This analysis should be done on a product by product basis.

²⁶ Instruction 2 to item 7 of form N-3, instruction 2 to item 6 of form N-4 and item 13(h) of form N-8B-2.

²⁷ Positive cash flows do not necessarily contradict the representation that the risk charge was designed only for the purpose of meeting the costs of bona fide mortality and administrative expense guarantees. Cash flow in early years from risk charges on a particular product may be necessary to meet the guarantee costs in later years. In addition, positive cash flows may cover distribution expenses in early years while, for example, deferred sales charges set at a level designed to cover distribution costs may "pay" the costs of mortality and administrative expense guarantees in the later years.

²⁸ *Supra* note 26. Directors of management accounts or funds underlying trust accounts should address the possibility that insurance companies or their affiliates could collect twice for the same distribution expenses; once under a plan pursuant to rule 12b-1 and once through risk charges. The dual collection of fees could occur in either of two ways, depending on whether the separate account is a management account or a trust account. The potential for dual fees is greatest in the case of a management account. Under rule 12b-1, a management investment company may adopt a plan specifically designed to finance distribution of its securities from its assets, provided that the directors can reasonably expect the plan to benefit securityholders. When a management account already pays some distribution expenses through risk charges the board of directors should carefully consider the propriety of also imposing distribution charges under a 12b-1 plan on the account and the likelihood of benefit to contractholders.

In the trust account context, it appears that the board of directors of an underlying fund could, consistent with the standards of rule 12b-1, approve a distribution financing plan only where, and to the extent that, the fund continuously offers and sells its shares to trust accounts of previously unaffiliated insurers. Where an underlying fund sells its shares exclusively to the separate accounts of an affiliated insurance company as an investment vehicle for variable insurance contracts issued by the company, there appears little need for a rule 12b-1 plan; few distribution expenses are necessary for such a "captive" fund to sell its shares to the trust account. Moreover, even where an investment company is organized by an insurer for use as an underlying fund both for its own trust accounts and for the trust accounts of other insurers, the board of directors should carefully consider the propriety of any rule 12b-1 plan and the potential for double-charging investors at the separate account level for the distribution costs of the underlying fund.

Registrants relying on repropoed rule 26a-3 would be exempted from the provisions of rule 12b-1 to the extent necessary to deduct risk charges.²⁹ However, if such a registrant (or underlying fund) had adopted a 12b-1 plan, proposed rule 26a-3 would have required the registrant to make one additional representation relating to rule 12b-1. This representation would have differed slightly in form between management accounts and trust accounts. Paragraph (a)(4)(ii)(B)(1) of the proposed rule would have required a management account to represent that it would have a board of directors formulate and approve any plan under rule 12b-1 to finance distribution expenses. Paragraph (a)(4)(ii)(B)(2) of the proposed rule would have required a trust account to represent that it would invest only in an underlying fund that had undertaken to have a board of directors formulate and approve any 12b-1 plan. These subparagraphs, as proposed, also would have required that a majority of the board of directors of any management account or underlying fund adopting a 12b-1 plan consist of individuals who are not "interested persons" of the account or fund.

Several commentators objected to the proposed board of director composition requirements. The commentators insisted that those requirements would create an unwarranted regulatory disparity between management accounts and funds underlying trust accounts on the one hand, and management investment companies that are not management accounts or underlying funds of trust accounts on the other. Rule 12b-1 does not specify any board composition requirements; such requirements are imposed by section 10 of the Act [15 U.S.C. 80a-10].³⁰

One commentator also opined that Paragraph (a)(4)(ii)(B)(2) was premised on the mistaken notion that trust accounts are restricted to investing in underlying funds established by the insurance company that sponsored the trust account.³¹ That commentator

stated that recent modifications to section 817(h) of the Internal Revenue Code of 1954 [26 U.S.C. 817(h)] allows trust accounts to invest in "outside" funds (i.e., underlying funds organized by an entity unaffiliated with the trust account in question or its insurance company sponsor), and that trust account sponsors could not force such funds to comply with the board of directors composition requirement of Paragraph (a)(4)(ii)(B). The consequences of this requirement, asserted the commentator, would be to reduce the universe of funding vehicles available to trust accounts, thereby reducing their competitive appeal and usefulness to contractholders.

The Commission agrees with the concerns that apparently prompted these comments. Management investment companies funding variable insurance products should be subject to the same procedural requirements as other management investment companies, absent a compelling need under the Act for special regulation arising from the nature of the insurance product. Accordingly, Paragraph (a)(4)(ii)(B) has been deleted in the repropoed rule, and management investment companies funding insurance products that adopt distribution financing plans would be subject to only the requirements of rule 12b-1 itself.

Cost-Benefit Analysis

To evaluate fully the benefits and costs associated with repropoed rule 26a-3, the proposed amendment to rule 6e-3(T), and the proposed form amendments, the Commission requests commentators to provide views and data about the costs and benefits of eliminating the need for individual exemptive orders under the circumstances outlined. In this regard, the Commission notes that the proposals should reduce the filing burden of registrants and associated costs such as legal fees. A reduction in these expenses, however, may be offset in part by intangible costs associated with ascertainment of data for, and continuing compliance with, representations contained in prospectus disclosure for some registrants.

List of Subjects in 17 CFR Parts 270 and 274

Investment companies, Disclosure, Reporting and recordkeeping requirements, Securities.

annuity contracts can effectively invest only in management investment companies established by the insurance company that sponsors the trust account.

Text of Rule and Rule Amendments

It is proposed to amend Chapter II of Title 17 of the Code of Federal Regulations as shown.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The Authority citation for Part 270 continues to read in part as follows:

Authority: Secs. 6(c), 38, 40, 54 stat. 841, 842, 15 U.S.C. 80a-37, 80c-89.

§ 270.0-1 [Amended]

2. By revising paragraphs (e) introductory text and (e)(2) of § 270.0-1 to read as follows:

§ 270.0-1 Definition of terms used in this part.

(e) Definition of separate account and conditions for availability of exemption under §§ 270.6c-6, 270.6c-7, 270.6c-8, 270.11a-2, 270.14a-2, 270.15a-3, 270.16a-1, 270.22c-1, 270.22d-2, 270.22e-1, 270.26a-1, 270.26a-2, 270.26a-3, 270.27a-1, 270.27a-2, 270.27a-3, 270.27c-1, and 270.32a-2 of this chapter.

(2) As conditions to the availability of exemptive Rules 6c-6, 6c-7, 6c-8, 11a-2, 14a-2, 15a-3, 16a-1, 22c-1, 22d-2, 22e-1, 26a-1, 26a-2, 26a-3, 27a-1, 27a-2, 27a-3, 27c-1, and 32a-2, the separate account shall be legally segregated, the assets of the separate account shall, at the time during the year that adjustments in the reserves are made, have a value at least equal to the reserves and other contract liabilities with respect to such account, and at all other times, shall have a value approximately equal to or in excess of such reserves and liabilities; and that portion of such assets having a value equal to, or approximately equal to, such reserves and contract liabilities shall not be chargeable with liabilities arising out of any other business which the insurance company may conduct.

§ 270.26a-3 [Amended]

3. By adding new § 270.26a-3 to read as follows:

§ 270.26a-3 Exemption from certain provisions of sections 12(b), 26, and 27, and rule 12b-1 for registered variable annuity separate accounts and others regarding deduction of mortality and expense risk charges and distribution.

(a) Any registered separate account, and any depositor of or principal underwriter for such account ("insurer"), may, notwithstanding the provisions of sections 26(a)(2)(C) and 27(c)(2) of the Act [15 U.S.C. 80a-26(a)(2)(C) and 80a-27(c)(2)], with respect to any variable

²⁹ Paragraph (c) of the proposed rule would have exempted a management account from section 12(b) of the Act [15 U.S.C. 80a-12(b)] and rule 12b-1 thereunder to the extent that the insurer uses monies derived from risk charges to finance the distribution of annuity contracts. Paragraph (b) of the rule, as repropoed, would continue to provide this exemption. Consequently, to deduct only risk charges, the registrant would not need to comply with the requirements of rule 12b-1.

³⁰ Section 10 of the Act requires only that 40% of a management investment company's directors not be "interested persons" of the company.

³¹ The release originally proposing rule 26a-3 cited Revenue Ruling 81-225, 1981-41 L.R.B. (Oct. 13, 1981) for the proposition that trust accounts offering

annuity contract participating in such account, deduct a charge for the assumption of mortality or expense risks in connection with such contract ("risk charge"). *Provided*, That the separate account's registration statement under the Securities Act of 1933 [15 U.S.C. 77a et seq.] includes:

(1) A statement that this rule is being relied upon;

(2) A representation that the risk charge is designed only to cover the cost of bona fide mortality and administrative expense risks;

(3) A representation that the level of the risk charge is reasonable in relation to the mortality and administrative expense risks assumed under the contract; and

(4) A brief description of the methodology used to support the representations made concerning the level of the risk charge in response to paragraph (a)(3) of this rule, and an undertaking to maintain and make available to the Commission upon request a memorandum and other documentation setting forth the methodology used to support that representation.

(b) Any separate account registered under the Act as an open-end management investment company and deducting a risk charge pursuant to this rule shall be exempt from section 12(b) of the Act [15 U.S.C. 80a-12(b)] and rule 12b-1 thereunder to the extent that the insurer uses positive cash flows derived from the risk charge to finance distribution of annuity contracts issued in connection with the separate account.

§ 270.6e-3(T) [Amended]

4. By reviewing paragraph (b)(13)(iii)(F) of § 270.6e-3(T) to read as follows:

* * *

(b) * * *

(13) * * *

(iii) * * *

(F) The deduction of a charge for mortality, expense, and any guaranteed death benefit risks assumed by the life insurer under the flexible contracts (collectively, a "risk charge"). *Provided*, That the registration statement under the 1933 Act for flexible contracts includes:

(1) A statement that this paragraph is being relied upon;

(2) A representation that the risk charge is designed only to cover the cost of bona fide guaranteed death benefit, mortality, and administrative expense risks;

(3) A representation that the level of the risk charge is reasonable in relation to the guaranteed death benefit,

mortality, and administrative expense risks assumed under the contract; and

(4) A brief description of the methodology used to support the representations made concerning the level of the risk charge in response to paragraph (b)(13)(iii)(F)(3) of this rule, and an undertaking to maintain and make available to the Commission upon request a memorandum and other documentation setting forth the methodology used to support that representation. *Provided further*, that the prospectus shall disclose the risk charge, which charge shall not be less than fifty per centum of the maximum risk charge as disclosed in the prospectus and provided for in the contract. In addition, any separate account organized under the Act as a management investment company and deducting a risk charge pursuant to this paragraph shall be exempt from section 12(b) of the Act [15 U.S.C. 80a-12(b)] and Rule 12b-1 [17 CFR 270.12b-1] thereunder to the extent that the life insurer uses monies derived from the risk charge to finance distribution of the flexible contracts.

* * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

5. The authority citation for Part 274 continues to read in part, as follows:

Authority: The Investment Company Act of 1940, 15 U.S.C. 80a-1 *et seq.*

6. By revising the instructions to item 7 of form N-3 in § 274.11b to read as follows:

§ 274.11b Form N-3, Registration Statement of Separate Accounts Organized as Management Investment Companies.

* * *

Part A. Information Required in a Prospectus

* * *

Item 7. Deductions and Expenses

* * *

Instructions: 1. Identification of the range of current premium taxes is sufficient.

2. If proceeds from explicit sales loads will not cover the expected costs of distributing the contracts, identify the source from which the shortfall, if any, will be paid. If any shortfall is to be made up through the use of assets from the Insurance Company's general account, disclose, if applicable, the extent to which any amounts paid by the Insurance Company may consist, among other things, of proceeds derived from mortality and expense risk charges deducted from the account. If the level of the mortality and expense risk charge is above the range of industry practice for comparable annuity contracts, disclose this fact along with an explanation of why the charge is above this range, including an identification of the factors used to calculate

the charge. If the level of the mortality and expense risk charge is above the range of industry practice, also disclose the extent to which the Insurance Company realizes positive cash flows (risk charge proceeds net of current costs of meeting mortality and expense guarantees) from risk charges as well the extent to which positive cash flows may be used to pay distribution expenses. If Registrant directly or indirectly pays distribution expenses under 1940 Act Rule 12b-1 [17 CFR 270.12b-1], list the principal types of activities for which payments are or will be paid, and (1) if the plan has been in effect for a full fiscal year, give the total amount spent in the most recent fiscal year as a percentage of net assets; or (2) otherwise describe the basis on which payments will be made (e.g., percentage of net assets, etc.).

* * *

7. By amending Guide 28 of Guidelines for form N-3 in § 274.11b as follows:

Guide 28—Distribution Expenses

Item 7 requires that separate accounts that bear distribution expenses in accordance with rule 12b-1 disclose this fact to contract-owners in the prospectus.³²

Many registrants have individual exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to permit them to deduct a charge from the separate account for the assumption of mortality and/or expenses risks. In furtherance of requests for this exemptive relief, where proceeds from explicit sales loads will not be sufficient to cover expected distribution costs, many registrants represent, among other things, that there is a reasonable likelihood that the separate account's distribution financing arrangement will benefit the separate account and contractowners. Likewise, rule 26a-3 exempts registrants from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act for the same purpose. The exemptions provided by rule 26a-3 are, however, conditioned upon representations by the registrant that, among other things, the charge is designed only for the purpose of covering the cost of bona fide guaranteed death benefits, mortality, and administrative expense risks.³³ Representations required of a registrant by rule 26a-3 or as a condition for an individual exemptive order should be disclosed in the Statement of Additional Information.

8. By revising the instructions to item 6 of form N-4 in § 274.11c to read as follows:

³² For a more detailed discussion of the contents of the rule, see Investment Company Act Release No. 11414 (October 28, 1980) [45 FR 73898 (November 7, 1980)].

³³ For a discussion of representations by applicants seeking this exemptive relief, see Investment Company Act Release No. 14190 (October 11, 1984) [49 FR 40879, October 18, 1984]. For a discussion of representation required of registrants under rule 26a-3, see Investment Company Act Release No. IC-15586 (February 26, 1987).

§ 274.11c Form N-4, Registration Statement of Separate Accounts Organized as Unit Investment Trusts.

Part A. Information Required in a Prospectus

Item 6. Deductions

Instructions: 1. Identification of the range of current premium taxes is sufficient.

2. If proceeds from explicit sales loads will not cover the expected costs of distributing the contracts, identify the source from which the shortfall, if any, will be paid. If any shortfall is to be made up through the use of assets from the depositor's general account, disclose, if applicable, the extent to which any amounts paid by the depositor may consist, among other things, of proceeds derived from mortality and expense risk charges deducted from the account. If the level of the mortality and expense risk charge is above the range of industry practice for comparable annuity contracts, disclose this fact along with an explanation of why the charge is above the range, including an identification of the factors used to calculate the charge. If the level of the mortality and expense risk charge is above the range of industry practice, also disclose the extent to which the depositor realizes positive cash flows (risk charge proceeds net of current costs of meeting mortality and expense guarantees) from risk charges as well as the extent to which positive cash flows may be used to pay distribution expenses. If any portfolio company directly or indirectly pays distribution expenses under 1940 Act Rule 12b-1 [17 CFR 270.12b-1], list the principal types of activities for which payments are or will be paid, and (1) if the plan has been in effect for a full fiscal year, give the total amount spent in the most recent fiscal year as a percentage of net assets; or (2) otherwise briefly describe the basis on which payments will be made (e.g., percentage of net assets, etc.). Disclose the extent, to which such a plan of distribution directly or indirectly pays or will pay expenses of distributing the contracts.

9. By revising Guide 4 of Guidelines for form N-4 in S§274.11c as follows:

Guide 4—Distribution Expenses

Item 6 requires that registrants disclose to contractowners in the prospectus whether any portfolio company bears any expenses of distributing its shares in accordance with rule 12b-1.

Many registrants have individual exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to permit them to deduct a charge from the separate account for the assumption of mortality and/or expense risks. In furtherance of requests for this exemptive relief, where proceeds from explicit sales loads will not be sufficient to cover expected distribution costs, many registrants represent, among other things, that there is a reasonable likelihood that the separate account's distribution financing arrangement will benefit the separate account and contractowners. Likewise, rule

26a-3 exempts registrants from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act for the same purpose. The exemptions provided by rule 26a-3 are, however, conditioned upon representations by the registrant that, among other things, the charge is designed only for the purpose of covering bona fide guarantee death benefit, mortality, and administrative expense risks.³⁴ Representations required of a registrant by rule 26a-3 or as a condition for an individual exemptive order should be disclosed in the statement of Additional Information.

10. By revising paragraph (h) of item 13 of form N-8B-2 in § 274.12 as follows:

§ 274.12 Form N-8B-2, Registration Statement of Unit Investment Trusts which are Currently Issuing Securities.

General Information of the Trust and Securities of the Trust

Information Concerning Loads, Fees, Charges and Expenses

13. * * *

(h) For life insurance company separate accounts registered as unit investment trusts issuing variable life insurance contracts:

If proceeds from explicit sales loads will not cover the expected costs of distributing the contracts, identify the source from which the shortfall, if any, will be paid. If any shortfall is to be made up from assets from the Insurance Company's general account, disclose, if applicable, the extent to which any amounts paid by the Insurance Company may consist, among other things, of proceeds derived from mortality and expense risk charges deducted from the account. If the level of the mortality and expense risk charge is above the range of industry practice for comparable variable life insurance contracts, disclose this fact along with an explanation of why the charge is above this range, including an identification of the factors used to calculate the charge. If the level of the mortality and expense risk charge is above the range of industry practice, also disclose the extent to which the Insurance Company realizes positive cash flows (risk charge proceeds net of current costs of meeting mortality and expense guarantees) from risk charges, as well as the extent to which positive cash flows may be used to pay distribution expenses. If a portfolio company, selling its securities to the trust, directly or indirectly pays distribution expenses under 1940 Act Rule 12b-1 [17 CFR 270.12b-1], list the principal types of activities for which payments are or will be paid; and (1) if the plan has been in effect for a full fiscal year, give the total amount spent

in the most recent fiscal year as a percentage of net assets, or (2) otherwise describe the basis on which payments will be made (e.g., percentage of net assets, etc.). Disclose the extent, if any, to which such a plan of distribution directly or indirectly pays, or will pay, expenses of distributing the variable life insurance contracts.

Dated: February 26, 1987.

By the Commission.

Jonahan G. Katz,

Secretary.

[FR Doc. 87-4720 Filed 3-6-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. 87-9]

National Standards for Traffic Control Devices; Revision of the Manual on Uniform Traffic Control Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed amendments to the Manual on Uniform Traffic Control Devices; request for comments.

SUMMARY: The FHWA is inviting comments on proposed amendments to the Manual on Uniform Traffic Control Devices (MUTCD). The MUTCD is incorporated by reference in 23 CFR 655, Subpart F and recognized as the national standard for traffic control devices on all public roads. The amendments affect various parts of the MUTCD and are intended to expedite traffic, improve safety, and provide a more uniform application of highway signs, signals, and markings.

DATE: Comments must be received on or before July 17, 1987.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 87-9, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Philip O. Russell, Office of Traffic Operations, (202) 366-2184, or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 366-1383, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15

³⁴ For a discussion of representations by applicants seeking this exemptive relief, see Investment Company Act Release No. 14190 (October 11, 1984) [49 FR 40879, October 18, 1984]. For a discussion of representations required by registrants under rule 26a-3, see Investment Company Act Release No. IC-15586 (February 26, 1987).

p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D. It may be purchased for \$44 from the superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 950-036-00000-1. The purchase of a MUTCD includes a subscription service for adopted revisions.

The FHWA both receives and initiates requests for amendments to the MUTCD. Each request is assigned an identification number which indicates, by Roman numeral, the organizational part of the MUTCD affected and, by Arabic numeral, the order in which the request was received.

This notice is being issued to provide an opportunity to comment on the desirability of proposed amendments to the MUTCD. Based upon comments received in response to this notice and upon its own experience, the FHWA will issue a final rule concerning these requests.

Index of Requests

General Provisions (Part I)

(1) Request I-5 (Chng.)—Compliance Dates.

Signs (II)

(2) Request II-89 (Chng.)—Use of Strong Yellow-Green for emergency Situations.

(3) Request II-115 (Chng.)—Use of ONE WAY and Divided Highway Crossing Signs.

(4) Request II-118 (Chng.)—Standard Motorcycle Warning Sign.

(5) Request II-122 (Chng.)—Improved legibility of the Directional Legend NORTH, SOUTH, EAST and WEST.

(6) Request II-123 (Chng.)—Tourist Information Signing—Use of State, County, City or Town Name on Highway Signs.

(7) Request II-132 (Chng.)—Criteria for Emergency Medical Services (EMS) Symbol Sign.

Signals (IV)

(8) Request IV-60 (Chng.)—Revision to Warrant 3, Minimum Pedestrian Volume.

(9) Request IV-73 (Chng.)—Elimination of "Blind" Change Interval.

Copies of the proposed text changes to the MUTCD will be distributed to everyone currently appearing on the FHWA mailing list for MUTCD matters. Those wishing to be added to the mailing list or receive copies of the proposed text should write to the Federal Highway Administration, Office of

Traffic Operations (HTO-21), 400 Seventh Street SW., Washington, DC 20590 or contract Mr. Philip O. Russell (202) 366-2184.

Discussion of Requests

The FHWA proposes to act on the requests for changes to the MUTCD as noted below:

General Provisions (Part I)

(1) Request I-5 (Chng.)—Compliance Dates. Since the issuance of the 1978 edition of the MUTCD, the FHWA has published in the *Federal Register* five final ruling documents with 81 ruling changes. Nineteen of these changes were published with specific compliance dates. Compliance dates for changes to the MUTCD are assigned to improve safety and provide uniformity in use and application of traffic control devices within a reasonable period of time.

The FHWA has conducted a comprehensive of these 81 rulings and recommends that an additional 10 be assigned compliance dates. The 10 items are listed in the table along with previous *Federal Register* actions regarding these rulings and the MUTCD revision in which these changes were incorporated. If adopted, these changes would amend the Official Rulings Section of the MUTCD.

Item	Ruling number	Title	MUTCD revision number	Published in Federal Register as:	
				Final rule	Notice of proposed rulemaking
a	II-7 (Chng.)	Signing Public Median Crossovers	3	48 FR 54336	48 FR 1075
b	II-20 (Chng.)	Symbol for Police Assistance	3	48 FR 54336	48 FR 1075
c	II-38 (Chng.)	Identifying Left-Hand Exit on Interchange Sequence	3	48 FR 54336	48 FR 1075
d	II-65 (Chng.)	Service Signing for Liquefied Petroleum Gas	4	50 FR 10001	49 FR 1213
e	II-75 (Chng.)	Sign Requirements for Two-Way Left Turn Only Lanes	4	49 FR 38940	49 FR 1213
f	III-9 (Chng.)	Uses and Spacing of Raised Pavement Markers	4	50 FR 10001	49 FR 1213
g	VI-25 (Chng.)	Use of 29-inch Cones	4	49 FR 38940	49 FR 1213
h	VI-27 (Chng.)	Minimum Area of Reflective Barricade Rails	15	50 FR 50784	50 FR 10072
i	VIII-5 (Chng.)	Use of STOP at Railroad-Highway Grade Crossings	2	48 FR 1047	47 FR 5238
j	VIII-11 (Chng.)	Location of DO NOT STOP ON TRACKS Sign (R8-8)	5#	50 FR 50784	50 FR 10072

¹ Revision 5 will be printed in the spring of 1987.

Federal Register—FHWA Docket Number and Date Published in Federal Register

47 FR 5238—Docket No. 79-37, Notice 2 (February 4, 1982).

48 FR 1047—Docket Nos. 79-35, 79-37, and 80-10 (January 10, 1983).

48 FR 1075—Docket No. 82-15 (January 10, 1983).

48 FR 54336—Docket No. 82-15, Notice 2 (December 2, 1983).

49 FR 1213—Docket No. 83-26 (January 10, 1984).

49 FR 38940—Docket Nos. 79-31, 79-37, and 83-26 (October 2, 1984).

50 FR 10001—Docket Nos. 79-31, 79-37, 80-10, 82-15, and 83-26 (March 13, 1985).

50 FR 10072—Docket No. 85-3 (March 13, 1985).

50 FR 50784—Docket Nos. 79-37, 83-26, 85-1, 85-3, 85-18, and 85-28 (December 12, 1985).

The following is a discussion of the rationale for establishing a specific compliance date for each item:

(a) Request II-7 (Chng.)—Signing Public Median Crossovers. This amendment added a new Section 2D-52 to the MUTCD, providing more specific guidance on standard signs for inconspicuous public median crossovers. Upon review, the FHWA

proposes that when public median crossovers are signed, the standard sign should be used. A December 31, 1990, compliance date for mandatory use of the CROSSOVER Sign is proposed.

(b) Request II-20 (Chng.)—Symbol for Police Assistance. This amendment revised Section 2D-46 of the MUTCD to standardize the sign used for police assistance. Upon review, the FHWA proposes that when signs indicating availability of police assistance are installed, the adopted standard sign should be used. A December 31, 1990,

compliance date for mandatory use of the POLICE Sign will be established.

(c) Request II-38 (Chng.)—Identifying Left-Hand Exit on Interchange Sequence. This amendment revised Section 2E-34 of the MUTCD to provide a method of identifying left-hand exits on Interchange Sequence signs for urban freeways. This amendment provided highway agencies with a voluntary and standard method of identifying left-hand exits on urban expressways and freeways. Upon review, the FHWA now feels, from a safety and traffic operations standpoint, a standard method should be used to sign left-hand exits on urban expressways and freeways. It is proposed that left-hand exits on urban expressways and freeways should be signed in conformance with the provisions of Section 2E-24 with a compliance date of December 31, 1990. (Note: This will require changing a "may" to a "should" in the text of Section 2E-34).

(d) Request II-65 (Chng.)—Service Signing for Liquefied Petroleum Gas. This amendment revised Section 2D-46 to establish a standard symbol for those highway agencies wishing to identify liquefied petroleum gas (LP-Gas) refilling facilities. Upon review, the FHWA feels that if LP-Gas refilling facilities are signed, the standard sign should be used. A December 31, 1990, compliance date for mandatory use of the standard LP-Gas symbol is proposed.

(e) Request II-75 (Chng.)—Sign Requirements for Two Way Left Turn Only Lanes. This amendment revised Sections 2B-19 and 3B-12 to relax mandatory requirements while maintaining adequate means to inform the public of two way left turn operations. This amendment specified certain pavement lane line markings and required the use of pavement marking arrows on two way left turn only lanes. A December 31, 1988, compliance date for mandatory use of the standard pavement markings is proposed.

(f) Request III-9 (Chng.)—Uses and Spacing of Raised Pavement Markers. This amendment to Sections 3A and 3B of the MUTCD established standards for raised pavement markers when used to supplement and in some cases to substitute for other types of pavement markings or as positional guides. A December 31, 1990, compliance date for this amendment is proposed.

(g) Request VI-25 (Chng.)—Use of 28-Inch Cones. This amendment to Section 6C-3 adopted a minimum height of 28 inches for cones used on freeways and other high-speed roadways, and on all facilities during hours of darkness or whenever more conspicuous guidance is

needed. A December 31, 1990, compliance date for this amendment is proposed.

(h) Request VI-27 (Chng.)—Minimum Area of Reflective Barricade Rails. This amendment to Section 6C-9 adopted a requirement that Type I barricades used on expressways, freeways, and other high-speed roadways, have a minimum reflective area of 270 square inches. A December 31, 1988, compliance date for this amendment is proposed.

(i) Request VIII-5 (Chng.)—Use of STOP Signs at Railroad-Highway Grade Crossings. This amendment to Sections 2B-5 and 8B-9 provided additional guidelines for determining the need of STOP Signs at railroad-highway grade crossings. This amendment also required the installation of a Stop Ahead Sign (W3-1 or W3-1a) in advance of the STOP Sign. A December 31, 1989, compliance date for this amendment is proposed.

(j) Request VIII-11 (Chng.)—Location of DO NOT STOP ON TRACKS Sign (R8-8). This amendment to Section 8B-8 allowed more engineering judgment in the placement of the DO NOT STOP ON TRACKS Sign, rather than specifying an arbitrary location. A December 31, 1990, compliance date for this amendment is proposed.

These proposed changes would impose no additional costs to highway agencies other than those already addressed when each of these changes was initially adopted.

Signs (Part II)

(2) Request II-89 (Chng.)—Use of Strong Yellow-Green for Emergency Situations. The Michigan Department of State Police has requested that the MUTCD be amended to allow the use of strong yellow-green (SYG) signs to control traffic under temporary, emergency conditions. Such conditions would include situations such as fires, accidents, catastrophic road failures, stalled vehicles, etc.

The FHWA, in cooperation with Marketing Displays, Inc., authorized several State and local departments to experiment with portable, roll-up, SYG signs. The FHWA correspondence urged, and the work plan and questionnaire designed for the experimentation provided, not only for the evaluation of the SYG sign's effectiveness, but for the comparison of the effectiveness of the SYG sign with the standard black on yellow warning signs.

The FHWA also funded a research study (1) to evaluate emergency messages on SYG, orange and yellow backgrounds.

The FHWA has determined that it is appropriate for the MUTCD to contain standards for traffic control devices for emergency operations.

Neither the experimentation nor the research study were successful in showing that the effectiveness of SYG signs was equal to or superior to that of the standard black on yellow signs. The FHWA observed a field demonstration in which both orange and SYG signs were erected as warning signs at a mock accident site. The retroreflectometer readings of the SYG sign were greater than those of the orange sign. While the SYG sign was detected at a greater distance by most observers, the message recognition distance was very nearly equal for the two signs. Some observers found that they could read the message on the orange sign at a greater distance. The standard black on yellow signs were not included in this demonstration.

In conclusion, the FHWA finds that it is not appropriate to allow the use of SYG for emergency situation signing.

To address the issue of signing for emergency situations, the FHWA proposes to amend the MUTCD by adding a new subpart VI-H, Traffic Control for Incident Management. The proposed amendment sets forth standard devices to be used for controlling traffic as a result of incidents on the roadway or adjacent to the roadway. The FHWA believes that the proposed amendment will provide better traffic control under emergency conditions through the uniform application of standard devices. The amendment retains the present color, shape, size and application standards for regulatory and warning devices.

This amendment may have some financial impact on State and local jurisdictions. To offset these costs, an implementation period of 2 years is proposed.

(3) Request II-115 (Chng.)—Use of ONE WAY and Divided Highway Crossing Signs. As a result of a request for interpretation by the Indiana Department of Highways, the FHWA proposes to amend Section 2A-31 to clarify the proper application of traffic control signs for the control of one way traffic at divided highway intersections.

The second and third paragraphs of Section 2A-31 and Figure 2-3a would be modified to indicate that: (a) in most cases ONE WAY signs are not needed at intersections where the median width is less than 30 feet, (b) in these cases where needed, any combination of ONE WAY and/or Divided Highway Crossing (R6-3) signs may be used to improve operations at intersections where the median width is less than 30 feet, and

(c) where the median width is 30 feet or more, Turn Prohibition, DO NOT ENTER and WRONG WAY signs may be used to supplement ONE WAY sign layouts as shown in Figures 2-3, 2-3a or 2-4.

This proposed amendment will impose no additional costs on highway agencies, therefore, no compliance date is required.

(4) *Request II-118 (Chng.)—Standard Motorcycle Warning Sign.* The American Motorcycle Association (AMA) and others have requested that a series of warning signs be added to the MUTCD to advise of roadway elements which are especially hazardous to motorcyclists.

Through reviews and correspondence with the AMA, the FHWA has determined that there is usually a need to advise motorcyclists, through the use of permanent signing, of grooved pavements, scarified pavement, metal bridge surfaces (grating) and skewed railroad crossings. Other conditions, including strong crosswinds may also warrant permanent signing. In addition, there are temporary conditions, such as oil spills and loose sand or gravel, which may warrant the use of portable, temporary signs.

The FHWA proposes to add a new section, Warning Signs for Motorcyclists, following existing Section 2C-40. The proposed signs would employ the size, shape, and color of standard warning signs. A motorcycle symbol (as shown in Standard Highway Signs drawing RL-150) would be shown in the top portion of the warning sign. A word message which describes the hazard would be placed below the symbol.

An alternative approach would be to attach a motorcycle symbol sign below the standard warning signs. This supplemental sign would be a motorcycle symbol on a 24 inches by 24 inches rectangle or diamond panel. Commenters are asked to comment on the strengths of each of these alternatives.

This amendment may have some financial impact on State and local jurisdictions. To offset these costs, an implementation period of 3 years is proposed.

(5) *Request II-122 (Chng.) Improved Legibility of the Directional Legend NORTH, SOUTH, EAST and WEST.* The FHWA has received several requests to improve the readability of the cardinal direction words. Because of several visual similarities between the words north and south and between the words east and west, it has been suggested that the MUTCD be amended to require that the first letter of each of these words be larger, or at least taller

than the other letters in the words. Research conducted by the FHWA(2), found that the legibility of cardinal direction words were better when spelled using the capital/lower case format.

The FHWA proposes to amend Sections 2D-15, 2E-11, and 2F-11 of the MUTCD in such a way as to recommend that the first letter of the cardinal direction words be larger than the other block letters which follow or that cardinal direction words be presented in the capital/lower case format.

This amendment will have some financial impact on State and local jurisdictions. To offset these costs, an implementation period of 7 years (the average life of a sign) is proposed.

(6) *Request II-123 (Chng.)—Tourist Information Signing—Use of State, County, City or Town Name on Highway Signs.* The Virginia Department of Highways and Transportation (VDH&T) has requested that Section 2F-35 of the MUTCD be amended. The VDH&T wants to place on the motorist service signs the name of the State, County, City or Town which operates the Official Information Station.

The State's or local jurisdiction's name on the signs, while not assuring motorists of the type, quality, or quantity of information which will be found in the information center, would add authenticity and may reduce confusion in an area of closely spaced communities.

The FHWA, therefore, proposes to amend Section 2F-35 of the MUTCD in a manner which would allow the operating jurisdiction's name to be placed on highway signs and would recommend that each State develop a policy covering the operation and naming of information centers.

Because the implementation of this proposed amendment is at the discretion of the States, no compliance date is necessary.

(7) *Request II-132 (Chng.)—Criteria for Emergency Medical Services (EMS) Symbol Sign.* Section 2D-46 presently refers to criteria established by the National Highway Traffic Safety Administration (NHTSA). The NHTSA criteria is nonregulatory and has not been widely distributed to highway agencies and the public.

The FHWA proposes to amend Section 2D-46 by eliminating the reference to the NHTSA criteria, and by adding words that will require each State to develop criteria for the use of the sign.

This proposed amendment will increase the usefulness of the EMS Sign but will impose no additional cost. No

compliance date is needed to implement this change.

Signals (Part IV)

(8) *Request IV-60 (Chng.)—Revision to Warrant 3, Minimum Pedestrian Volume.* The National Committee on Uniform Traffic Control Devices (NCUTCD) has recommended that Warrant 3, the Minimum Pedestrian Volume Warrant, be revised. The FHWA concurs and proposes to amend Section 4C-5, "Warrant 3, Minimum Pedestrian Volume," to make it more realistic to the needs of pedestrians, the elderly and the handicapped. The existing "Minimum Pedestrian Volume Warrant," in the opinion of numerous traffic engineers, is unrealistic due to high pedestrian volume requirements. Consequently, it is largely ignored by the traffic engineering community. A more realistic warrant was developed in the study, "Candidate Signal Warrants from Gap Data,"(3) and was further evaluated in the study, "Pedestrian Signalization Alternatives"(4). Similar recommendations were also provided in various other previous research studies.

The recommended pedestrian warrant revision, developed and evaluated in the two research studies, considers the time available for pedestrians to cross the street (i.e., available gaps in the traffic flow). The number of adequate gaps can readily be determined based on techniques provided in the aforementioned research report, "Candidate Signal Warrants from Gap Data." The candidate revised warrant, as recommended by the researchers was reviewed by the NCUTCD and further evaluated by numerous traffic engineers. They found it to be too liberal in that it was not representative of pedestrian or traffic volumes. Also, it was suggested that provisions for the elderly and handicapped pedestrians be included in the warrant.

As a result of the comments, the warrant recommended by the researchers was modified by the NCUTCD. This proposed warrant includes two basic requirements:

1. Minimum pedestrian volumes of 100 pedestrians or more for each of any 4 hours of an average day; or 190 or more pedestrians for any 1 hour, and
2. That there shall be less than 60 adequate gaps per hour for those periods when the minimum volume requirements are met.

Also, the elderly and handicapped provisions are provided for by reducing the pedestrian crossing volume by 50 percent when the predominant pedestrian crossing speed is below 3.5 feet per second.

This proposed amendment will increase the usefulness of Warrant 3, the Minimum Pedestrian Volume, but will impose no additional cost. No compliance date is needed to implement this change.

(9) *Request IV-73 (Chng.)—Elimination of "Blind" Change Interval.* Use of a YELLOW ARROW is now optional following a GREEN ARROW indication if a CIRCULAR GREEN permitting the turn to continue on a permissive basis is displayed in the signal face simultaneously with the GREEN ARROW or immediately following the GREEN ARROW termination.

The NCUTCD recommends that Sections 4B-6-5 (a) and (c) of the MUTCD be modified to eliminate the optional so-called "blind change interval" following a leading green arrow. The FHWA supports this request which will provide for greater uniformity of left-turn displays.

This amendment may have some financial impact on State and local jurisdictions. To offset these costs, an implementation period of 5 years is proposed.

This notice of proposed amendments to the MUTCD is issued under the authority of 23 U.S.C. 109(d), 315, and 402(a), and the delegation of authority in 49 CFR 1.48(b).

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant proposal under the regulatory policies and procedures of the Department of Transportation. For the reasons stated herein and under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities. Due to the preliminary nature of the inquiry, a regulatory evaluation has not been prepared at this time. The expected impact of the changes requested is so minimal that a full regulatory evaluation does not appear to be warranted. The need to further evaluate economic consequences will be reviewed on the basis of the comments submitted in response to this notice.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Signs, Traffic regulations, Incorporation by reference.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on

Federal programs and activities apply to this program.)

Issued on: February 27, 1987.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

References

(1) *Motorist's Comprehension of Regulatory, Warning, and Symbol Signs*, November 1985, FHWA. Available for inspection and copying at the Federal Highway Administration, Office of Traffic Operations, Room 3419, 400 Seventh Street, SW., Washington, D.C. 20590.

(2) *The Legibility of Highway Guide Signs With Special Reference to Cardinal Direction Indications*, 1981, Report No. FHWA/RD-80/170. Available for inspection and copying at the Federal Highway Administration, Office of Traffic Operations, Room 3419, 400 Seventh Street, SW., Washington, D.C. 20590. Available for purchase from the National Technical Information Service, Springfield, Virginia 22161.

(3) *Candidate Signal Warrants From Gap Data*, February 1983, Report No. FHWA/RD-82/152. Available for inspection and copying at the Federal Highway Administration, Office of Traffic Operations, Room 3419, 400 Seventh Street, SW., Washington, D.C. 20590. Available for purchase from the National Technical Information Service, Springfield, Virginia 22161.

(4) *Pedestrian Signalization Alternatives*, July 1985, Report No. FHWA/RD-83/102. Available for inspection and copying at the Federal Highway Administration, Office of Traffic Operations, Room 3419, 400 Seventh Street, SW., Washington, D.C. 20590. Available for purchase from the National Technical Information Service, Springfield, Virginia 22161.

[FR Doc. 87-4812 Filed 3-6-87; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Amendments to Ohio Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: On August 20, 1986, the State of Ohio submitted to the Office of Surface Mining Reclamation and Enforcement (OSMRE) a proposed amendment to its Abandoned Mine Land Reclamation (AMLR) Plan. The amendment pertains to the role of the State of Ohio's Rural Abandoned Mines Program (RAMP) Committee as the primary forum for the involvement of

other State and Federal government agencies in the Ohio AMLR program, the use of "Opinions of Increase in Property Value" in lieu of conventional appraisals of property to be affected by AMLR project construction, and others. OSMRE is seeking public comment on the proposed amendment.

DATE: Written comments on the amendment must be received on or before 5:00 p.m., April 18, 1987.

ADDRESSES: Copies of the full text of the proposed amendment are available for review at the following locations: Chief, Division of Reclamation, Ohio Department of Natural Resources, Fountain Square, Columbus, Ohio 43224, and Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, 2nd Floor, Columbus, Ohio 43232. Written comments must be mailed or hand carried to: Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, Columbus, Ohio 43232.

I. Background

SUPPLEMENTARY INFORMATION: Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, establishes an abandoned mine land reclamation program for the purpose of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal law. Title IV provides that a State with an approved AMLR program has the responsibility and primary authority to implement an abandoned mine land reclamation program.

The Ohio AMLR program was approved on August 16, 1982, by the Secretary. On August 16, 1986, Ohio submitted a proposed amendment to its approved program under the provisions of 30 CFR 884.15. Under these provisions, if the proposed amendment or revision changes the objectives, scope, or major policies followed by a State in the conduct of its reclamation program, the Director must act on the proposed amendment in accordance with 30 CFR 884.14 in reviewing and approving or disapproving the proposed amendment or revisions of a State reclamation plan. This notice of

proposed rulemaking begins the process of review of the proposed amendment.

II. Public Meetings

Representatives of OSMRE's Field Office will be available to meet Monday through Friday, excluding holidays, between 8:00 a.m. and 4:00 p.m. at the address indicated above under "ADDRESSES," at the request of members of the public to receive their advice and recommendations concerning the proposed Ohio amendment. Persons wishing to meet with representatives of the Field Office during this time period may place such requests with William S. Miska, Chief, Abandoned Mine Lands, telephone (614) 866-0578. The Department intends to continue to discuss the State's amendment with representatives of the State throughout the review process. All contacts between Department personnel and representatives of the State will be conducted in accordance with OSMRE's guidelines on contacts with State officials published September 19, 1979, at 44 FR 54444.

Under 30 CFR 884.14, the Ohio amendment may be approved if the Director has:

- (1) Held a public hearing on the amendment within the State which submitted it, or made a finding that the public has been given adequate notice and opportunity to comment in the development of the amendment;
- (2) Solicited and considered the views of other interested Federal agencies;
- (3) Determined that the State has the legal authority, policies and administrative structure necessary to carry out the amendment;
- (4) Determined that the proposed amendment meets all the requirements of 30 CFR Subchapter R;
- (5) Determined that the State has an approved State regulatory program; and
- (6) Determined that the proposed amendment is in compliance with all applicable State and Federal laws and regulations.

III. Discussion of Proposed Rule

1. Involvement of Other Government Agencies:

The proposed Ohio AMLR Plan revisions clarify the role of the State Rural Abandoned Mines Program (RAMP) Committee as the primary forum for the involvement of other government agencies in the AML program of the Division of Reclamation. Further revisions are proposed which document the existence and functions of letters and memoranda of understanding

between the Division of Reclamation and individual agencies performing cooperative services with the Division of Reclamation. Use of the State RAMP Committee and of letters or memoranda of understanding is proposed to take the place of outdated mechanisms of cooperation which are not in use and which would be deleted from the AMLR Plan.

2. Realty Appraisal Methods:

The proposed AMLR Plan revisions authorize the use of "Opinions of Increase in Property Value" in lieu of conventional appraisals of property to be affected by AML project construction. These Opinions would be prepared by qualified appraisers for properties likely to undergo "insignificant" increases in value as a result of reclamation work. These revisions propose to establish the upper limit of these "insignificant" property value increases at two thousand dollars (\$2,000), the estimated cost of preparing, filing, and, if necessary, litigating an AML lien in Ohio.

3. AMLR Plan Appendices:

The proposed plan revisions delete thirteen appendices which contain outdated information or which concern programs no longer involved in the AML Program of the Division of Reclamation. Eighteen of the original thirty-one appendices to the AMLR Plan are to be updated and retained in the Plan.

4. Program Administration:

The proposed AMLR Plan revisions update the tables of organization for the Division of Reclamation and the descriptions of responsibilities for individual AML program staff members.

5. Table Format Changes and Minor Corrections:

The proposed AMLR Plan revisions improve the format of selected informational tables in the Plan and incorporate numerous minor changes to technical and numerical material throughout the body of the AMLR Plan.

IV. Procedural Matters

Executive Order 12291

The Office of Surface Mining Reclamation and Enforcement has examined this proposed rulemaking under section 1(b) of Executive Order No. 12291 (February 17, 1981) and has determined that, based on available quantitative data, it does not constitute a major rule. The reasons underlying this determination are as follows:

1. Approval will not have an effect on

costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; and

2. Approval will not have adverse effects on competition, employment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This proposed rulemaking has been examined pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Office of Surface Mining Reclamation and Enforcement has determined that the rule will not have significant economic effects on a substantial number of small entities. The reason for this determination is that approval will not have demographic effects, direct costs, information collection and recordkeeping requirements, indirect costs, nonquantifiable costs, competitive effects, enforcement costs or aggregate effects on small entities.

National Environmental Policy Act

The Office of Surface Mining Reclamation and Enforcement has determined that the Ohio amendment does not have a significant effect on the quality of the human environment because the decision relates only to the policies, procedures and organization of the State's Abandoned Mine Land Reclamation program. Therefore, under the Department of the Interior Manual DM 5162.3(a)(1), the Director's decision on the Ohio amendment is categorically excluded from the National Environmental Policy Act requirements.

As a result, no environmental assessment (EA) or environmental impact statement (EIS) has been prepared on this action.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental regulations, Surface mining, Underground mining.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.).

Dated: March 3, 1987.

James W. Workman,
Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 87-4894 Filed 3-8-87; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3144-4]

Standards of Performance for New Stationary Sources; Appendix B, Performance Specification 6—Addition of Specifications and Test Procedures for Continuous Emission Rate Monitoring Systems in Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule and Notice of Public Hearing.

SUMMARY: The purpose of this proposed rule is to add Performance Specification 6 (PS 6) to Appendix B of 40 CFR Part 60, to address continuous emission rate monitoring systems (CERMS's) that may be required by subparts to Part 60. The intended effect of this addition is to provide a protocol needed for the evaluation of the quality of the data produced by a CERMS. PS 6 contains specifications for acceptable data quality, and describes how test procedures from Appendix A of Part 60 are to be used to measure that quality. PS 6 would apply to any stationary source category where CERMS's are required, except when specifically excluded by the governing regulation.

A public hearing, if requested, will be held to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule.

DATES: Comments must be received on or before May 26, 1987.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by March 30, 1987, a public hearing will be held on April 23, 1987 beginning at 10:00 a.m. Persons interested in attending the hearing should call the contact mentioned under ADDRESSES to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by March 30, 1987.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), Attention Docket Number A-86-21, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons

interested in attending the hearing or wishing to present oral testimony should notify William Grimley, Emission Measurement Branch (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2237.

Docket. Docket No. A-8-21, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m. Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: William Grimley, or Roger Shigehara, Emission Measurement Branch, Emission Standards and Engineering Division (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2237.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

A performance specification for continuous emission rate monitoring systems is being added to Appendix B of 40 CFR Part 60. Subpart LLL of Part 60 specifies the use of such systems, and this performance specification is needed for their evaluation.

This rulemaking does not impose emission monitoring requirements beyond those specified in the current regulations, nor does it change any emission standard. Rather, the rulemaking would simply add a protocol for evaluating the achievement of emission monitoring requirements that would apply irrespective of this rulemaking.

II. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed test method in accordance with section 307 (d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the ADDRESSES section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central

Docket Section in Washington, DC (see ADDRESSES section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials [Section 307(d)(7)(A)]).

C. Office of Management and Budget Review

Executive Order 12291 Review. Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This regulation is not major because it will not have an annual effect on the economy of \$100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any written EPA responses are available in the docket.

D. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have any economic impact on small entities because the rule does not require the installation and associated maintenance costs of continuous monitoring systems. These costs were considered at the time that the regulation requiring these systems was developed. There are no additional recordkeeping and reporting requirements associated with this rule.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Onshore natural gas processing, Reporting and recordkeeping requirements, Incorporation by reference.

Dated: February 26, 1987.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

PART 60—[AMENDED]

It is proposed to amend 40 CFR Part 60 as follows:

1. The authority citation for Part 60 continues to read as follows:

Authority: Sections 101, 111, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. By adding Performance Specification 6 to Appendix B to read as follows:

Appendix B—Performance Specifications

* * * * *

Performance Specification 6—Specifications and Test Procedures for Continuous Emission Rate Monitoring Systems in Stationary Sources

1. Applicability and Principle

1.1 Applicability. Same as Section 1.1 of Performance Specification 2 (PS 2), except this specification is to be used for evaluating the acceptability of continuous emission rate monitoring systems (CERMS).

1.2 Principle. Reference method (RM), calibration drift (CD), and relative accuracy (RA) tests are conducted to determine that the CERMS conforms to the specification.

2. Definitions

2.1 Continuous Emission Rate Monitoring System (CERMS). The total equipment required for the determination and recording of the pollutant mass emission rate. The system consists of the following major subsystems:

2.1.1 Sample Interface. That portion of the CERMS used for one or more of the following: delineation, acquisition, transportation, or conditioning of a signal or signals from the stack gas, or protection of the CERMS from the effects of the stack effluent.

2.1.2 Pollutant Analyzer. That portion of the CERMS that senses the pollutant gas and generates an output proportional to the gas concentration.

2.1.3 Flow Rate Sensor. That portion of the CERMS that senses the volumetric flow rate and generates an output proportional to that flow rate. 2.1.4

Data Recorder. That portion of the CERMS that provides a permanent record of the emission rate. The data recorder may include automatic data reduction capabilities.

2.2 Relative Accuracy (RA). The absolute value of the mean of the differences between

the emission rates determined by the CERMS and the values determined by the RM's plus the 2.5 percent error confidence coefficient of the series of tests, divided by the mean of the RM's tests or the applicable emission limit.

2.3 Calibration Drift (CD). The difference in the CERMS output readings relative to each measurement parameter (e.g., gas flow rate) from the established reference value after a stated period of operation, during which no unscheduled maintenance, repair, or adjustment took place.

2.4 Representative Results. As defined by the RM test procedures outlined in this specification.

2.5 Reference Methods (RM's). Unless otherwise specified in the applicable subpart of the regulations, the RM for the pollutant gas is the Appendix A method that is cited for compliance test purposes, or its approved alternatives. Method 3 and 4 are the RM's for diluent (O_2 and CO_2) and moisture, if needed. Methods 2, 2A, 2B, 2C, or 2D, as applicable, are the RM's for the determination of volumetric flow rate.

3. Installation and Measurement Location Specifications

3.1 CERMS Installation and Measurement Location. Install the CERMS at an accessible location where the CERMS will pass the RA test (Section 7). If the cause of failure to meet the RA test is determined to be the measurement location, and a satisfactory correction technique cannot be established, the Administrator may require the CERMS to be relocated.

3.2 RM's Measurement Locations. Same as Section 3.2 of PS 2.

4. Performance and Equipment Specifications

4.1 Data Recorder Scale. Same as Section 4.1 of PS 2.

4.2 CD. The CERMS calibration shall not drift or deviate from each reference value by more than 3 percent of the respective high-level value. Since the CERMS includes analyzers for measurements, the CD shall be determined separately for each analyzer in terms of its specific measurement.

4.3 CERMS RA. The RA of the CERMS as determined in Section 7.3 shall be no greater than 20 percent of the mean value of the RM's test data in terms of the units of the emission standard, or 10 percent of the applicable standards, whichever is greater.

5. Performance Specification Test Procedure

5.1 Pretest Preparation. Install the CERMS, prepare the RM test site(s) according to the specifications in Section 3, and prepare the CERMS for operation according to the manufacturer's written instructions.

5.2 CD Test Period. While the affected facility is operating at more than 50 percent of normal load, or as specified in an

applicable regulation subpart, determine the magnitude of the CD once each day (at 24-hour intervals) for 7 consecutive days, according to the procedure given in Section 6. To meet the requirement of Section 4.2, none of the CD's must exceed the specification.

5.3 RA Test Period. Conduct the RA test according to the procedure given in Section 7 while the affected facility is operating at more than 50 percent of normal load, or as specified in an applicable subpart.

The RA test may be conducted during the CD test period.

6. CD Test Procedure

The CD measurements are to verify the ability of the CERMS to conform to the established CERMS calibrations used for determining the emission rate. Therefore, if periodic automatic or manual adjustments are made to the CERMS zero and calibration settings, conduct the CD tests immediately before these adjustments, or conduct them in such a way that CD can be determined.

Conduct the CD tests for pollutant concentration at the two values specified in Section 4.1 of PS 2. For other parameters that are selectively measured by the CERMS (e.g., temperature), use two analogous values. Introduce to the CERMS the reference signals (these need not be certified). Record the CERMS response to each, and subtract this value from the respective reference value (see example data sheet in Figure 6-1).

7. RA Test Procedure

7.1 Sampling Strategy for RM's Tests. Same as section 7.1 of PS 2. Also, during each RM's test period the CERMS should continuously measure the emission rate at all times. Make a series of nine emission rate determinations simultaneously using the RM's and the CERMS. These determinations can be made at any time interval at least 30 minutes apart.

7.2 Correlation of CERMS and RM's Data. Same as Section 7.2 of PS 2.

7.3 Calculations. Summarize the results on a data sheet. An example is shown in Figure 6-2. Perform all calculations listed in Section 8 of PS 2.

8. Reporting

Same as Section 9 of PS 2.

9. Bibliography

1. Books, E.F., E.C. Beder, C.A. Flegal, D.J. Luciani, and R. Williams. Continuous Measurement of Total Gas Flow Rate from Stationary Sources. U.S. Environmental Protection Agency. Research Triangle Park, North Carolina. Publication No. EPA-650/2-75-020. February 1975. 248 p.

BILLING CODE 6560-50-M

Day	Date and time	Measurement parameter	Reference value	Monitor value	Difference	Percent of high-level value

Figure 6-1. Calibration drift determination.

Run number	Date and time	Emission Rate, kg/hr ^a		
		CERMS	RM'S	Difference, RM'S-CERMS
1				
2				
3				
4				
5				
6				
7				
8				
9				

a The RM's and CERMS data as corrected to a consistent basis (i.e., moisture, temperature, and pressure conditions).

Figure 6-2. Emission rate determinations.

[FR Doc. 87-4861 Filed 3-6-87; 8:45 am]

BILLING CODE 6560-50-C

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-17, RM-5561]

Radio Broadcasting Services; Searcy, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by KWCK, Inc. proposing the substitution of Channel 260C2 for Channel 257A and modification of the license of Station KSER (FM) at Searcy, Arkansas.

DATES: Comments must be filed on or before April 13, 1987, and reply comments on or before April 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: M. ANNE Swanson, Esq., Wiley, Rein & Fielding, 1776 K St., NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-17, adopted January 30, 1987, and released February 20, 1987. The full text of this Commission decision is released February 20, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission, Mark N. Lipp, Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-4836 Filed 3-6-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-18, RM-5616]

Television Broadcasting Services; Burlington, Vermont and Boston, MA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Vermont Broadcasters proposing the assignment of UHF Television Channel 44 to Burlington, Vermont, as that community's third commercial television service. In order to accomplish the assignment the offset of Station WGBX-TV, Channel 44 at Boston, Massachusetts must change from "plus" to "zero." Canadian concurrence is required.

DATES: Comments must be filed on or before April 13, 1987, and reply comments on or before April 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Robert A. Beizer, Esquire, Craig J. Blakeley, Esquire, Adam M. Eisgrau, Esquire, Schnader, Harrison, Segal & Lewis, 1111 19th Street, NW., Suite 1000, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-18, adopted January 30, 1987, and released February 20, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission, Mark N. Lipp, Chief, Allocations Branch Mass Media Bureau.

[FR Doc. 87-4844 Filed 3-6-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-41, RM-5608]

Radio Broadcasting Services; Lindsie, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Monroe County (West Virginia) Board of Education proposing the allotment of Channel *294A to Lindsie, West Virginia and its reservation for noncommercial educational use, as that community's first FM service.

DATES: Comments must be filed on or before April 24, 1987, and reply comments on or before May 11, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Jeffrey D. Southmayd, Esquire, Stephen C. Simpson, Esquire, Southmayd, Powell & Taylor, 1764 Church Street, NW., Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-41, adopted February 5, 1987, and released March 2, 1987. The full text of this Commission decision is available

for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time of a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-4842 Filed 3-6-87; 8:45 am]

BILLING CODE 6712-01-M

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-520, adopted December 24, 1986, and released February 20, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time of a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-4840 Filed 3-6-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-19, RM-5624]

Radio Broadcasting Services; Tremonton, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by McAlester Broadcasting Systems of Utah, Ltd., proposed assignee of Station KKVU-FM, Channel 285A, Tremonton, Utah, proposing the substitution of Channel 286C2 for Channel 285A at Tremonton and the modification of the station license to specify operation of the new frequency. The proposal could provide that community with its first wide area coverage FM station. A site restriction

of 16.5 kilometers (10.2 miles) south of Tremonton is required.

DATES: Comments must be filed on or before April 13, 1987, and reply comments on or before April 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Richard J. Hayes, Esquire; 1359 Black Meadow Road; Spotsylvania, Virginia 22553 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-19, adopted January 30, 1987, and released February 20, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-4841 Filed 3-6-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-21, RM-5623]

Radio Broadcasting Services; Diamondville, WY

AGENCY: Federal Communications Commission.

SUMMARY: This document requests comments on a petition by Coshatta Tribal Broadcasting Services proposing the allotment of Channel 259A to Coldspring, Texas, as that community's first FM service. A site restriction of 9.6 kilometers (6.0 miles) west of the community is required.

DATES: Comments must be filed on or before April 13, 1987, and reply comments on or before April 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Thomas L. Root, P.C., 2120 L Street, NW., Suite 840, Washington, DC 20037. (Counsel to petitioner).

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Four Seasons, Inc., proposing the allocation of FM Channel 287C2 to Diamondville, Wyoming, as that community's first FM service.

DATES: Comments must be filed on or before April 20, 1987, and reply comments on or before May 5, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Lawrence J. Bernard, Jr., Esquire, Ward & Mendelsohn, P.C., 1100 17th Street, NW., Suite 900, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-21, adopted January 30, 1987, and released February 27, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-4843 Filed 3-6-87; 8:45 am]

BILLING CODE 8712-01-M

47 CFR Part 73

[MM Docket No. 87-44, RM-5602]

Radio Broadcasting Services; Healdton, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to substitute Channel 289C2 for Channel 288A at Healdton, Oklahoma, and to modify Station KZEA(FM)'s license to specify the higher powered channel, at the request of the licensee, Fen-Will Communications, Inc. Channel 289C2 can be allocated in compliance with the Commission's minimum distance separation requirements with a site restriction of 21.3 kilometers (13.2 miles) southeast. In accordance with § 1.420 of the Commission's Rules, we will not accept the filing of other interests in this proposed channel at Healdton.

DATES: Comments must be filed on or before April 24, 1987, and reply comments on or before May 11, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Eugene T. Smith, Esq., 715 G Street, SE., Washington, DC 20003 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-44, adopted February 5, 1987, and released March 2, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-4838 Filed 3-6-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-23, RM-5289, RM-5458]

Radio Broadcasting Services; Cazenovia, Manlius, Rome, Schoharie, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes the alternative allocation of Channel 242B1 to Schoharie, New York, as the community's first local FM service, at the request of Harvest Broadcasting Service, or the substitution of Channel 239B1 for Channel 237A at Manlius, New York, and the substitution of Channel 241B1 for Channel 240A at Rome, New York, at the joint request of AGK Communications, Inc. and WENY, Inc., and the modification of their respective licenses for Stations WAQX-FM, Manlius, and WKAL-FM, Rome. We also propose to reallocate Channel 237A from Cazenovia to Manlius to reflect its use there by Station WAQX-FM. The Commission also requests Harvest to state whether it would apply for Channel 242A at Schoharie, which could be allocated in compliance with the Commission's minimum distance separation requirements while also allowing the Class B1 allotments at Rome and Manlius. Channel 241B at Schoharie requires a site restriction of 7.1 kilometers southwest. Channel 239B1 can be substituted for Channel 237A at Manlius and used at Station WAQX-FM's present site in compliance with the mileage requirements to all domestic allotments if Channel 241B1 is substituted for Channel 240A at Rome, but would be 10.4 kilometers short-spaced to Station CJBS-1 at Belleville, Ontario, Canada. Channel 241B1 can be substituted for Channel 240A at Rome and used at Station WKAL-FM's present site in compliance with the mileage requirements to all domestic allotments but would be 17.6 kilometers short-spaced to station CFMK-FM, Channel 242, at Kingston, New York.

The Commission has confirmed the showing of AGK and WENY that there would be no overlap of the protected service contours between Station WAQX-FM at Manlius and Station CJBK-1 at Belleville. Our study also shows that Rome Station WKAL-FM's Channel 241B1 interfering signal would overlap Kingston Station CFMK-FM's protected contour. However, this occurs entirely on the U.S. side of the border. The study also shows that Rome Station WKAL-FM would receive interference within the domestic portion of its otherwise protected contour from the Kingston station. The Commission will, however, seek special negotiated status for these two proposals. All of the proposals require the concurrence of the Canadian Government.

DATES: Comments must be filed on or before April 13, 1987, and reply comments on or before April 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Martin R. Leader, Esq. and David D. Oxenford, Esq., Fisher, Wayland, Cooper and Leader, 1255-23rd Street, NW., Suite 800, Washington, DC 20037 (Counsel to AGK Communications, Inc.); Alfred C. Cordon, Jr., Esq. and Dennis J. Kelly, Esq., Cordon and Kelly, 1920 N Street, NW., Second Floor, Washington, DC 20036 (Counsel to WENY, Inc.); Brian Dodge, President, Harvest Broadcasting Services, Box 105 FM, Hinsdale, New Hampshire 03451 (Petitioner for Schoharie).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-23, adopted January 30, 1987, and released February 20, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037. Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are

prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR 73

Radio Broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-4837 Filed 3-6-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-43, RM-5574]

Radio Broadcasting Services; Mountaintop, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes the allocation of Channel 246A to Mountaintop, PA, as the community's first local FM service, at the request of James E. Morgan and Ronald F. Balonis. Petitioners are requested to provide demographic data showing that Mountaintop is a community for allotment purposes since it is not listed in the 1980 U.S. Census. The channel can be allocated in compliance with the Commission's minimum distance separation requirements without a site restriction. Canadian concurrence is required.

DATES: Comments must be filed on or before April 24, 1987, and reply comments on or before May 11, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James E. Morgan, 15 Worrall Street, Wilkes-Barre, PA 18792, Ronald F. Balonis, 118 Rice Street, Trucksville, PA 18708 (Petitioners).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-43, adopted February 10, 1987, and released March 2, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M

Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-4839 Filed 3-6-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[FRA Docket No. RSOR-6, Notice No. 16]

Informal Safety Inquiry; Control of Alcohol and Drug Use in Railroad Operations; Extension of Comment Period

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Informal safety inquiry; extension of comment period.

SUMMARY: FRA is extending until April 6, 1987, the deadline for submitting written comments for inclusion in the docket of the Informal Safety Inquiry on the Control of Alcohol and Drug Use in Railroad Operations. (See 52 FR 2118; January 20, 1987.)

DATE: Persons wishing to submit written comments and/or information for inclusion in the docket of this inquiry should do so by April 6, 1987.

ADDRESS: Docket Clerk, Office of Chief Counsel (RCC-30), Federal Railroad Administration, Washington, DC 20590. Telephone 202-366-0817.

FOR FURTHER INFORMATION CONTACT: Walter C. Rockey, Jr., Executive Assistant to the Associate

Administrator for Safety, FRA
(Telephone: 202-366-0897) or Renee M.
Marler, Attorney, Office of Chief
Counsel (Telephone: 202-366-0628).

SUPPLEMENTARY INFORMATION: On
January 20, 1987, the Federal Railroad
Administration published in the **Federal
Register** notice of an Informal Safety
Inquiry on the Control of Alcohol and
Drug Use in Railroad Operations (52 FR
2118). FRA initiated this safety inquiry
for the purpose of soliciting information
from the public to assist in evaluating
FRA's rule on Control of Alcohol and
Drug Use in Railroad Operations (49
CFR Part 219) approximately one year

after that rule became effective. (See 51
FR 3973; January 31, 1986.)

The January 20 notice of the safety
inquiry states that persons wishing to
submit written comments for inclusion
in the docket should submit them to the
FRA Docket Clerk by February 27, 1987
(52 FR 2118). This notice extends the
comment period until April 6, 1987. FRA
announced this extension of the
comment period at the public hearing
held in this docket on February 18, 1987.

The purpose of this extension is to
provide additional time to persons who
wish to submit information or comment
on the issues raised in the notice.

Additional time is provided in response
to submissions from several parties
indicating that they experienced
difficulty preparing comments within the
time frame originally established by the
notice of safety inquiry.

Authority: Section 202 and 209, Pub. L. No.
91-458, 84 Stat. 971, 975, as amended (45
U.S.C. 431, 438); 49 CFR 1.49, 211.61.

Issued in Washington, DC, on February 27,
1987.

John H. Riley,

Federal Railroad Administrator.

[FR Doc. 87-4872 Filed 3-8-87; 8:45 am]

BILLING CODE 4910-06-M

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Governmental Processes Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of a meeting of the Committee on Governmental Processes of the Administrative Conference of the United States. The meeting previously announced, but canceled due to the February 23 snowstorm has been rescheduled for Friday, March 13, 1987, at 10:00 a.m. at the office of Covington and Burling, 1201 Pennsylvania Avenue, NW, 11th floor, Washington, DC.

The Committee will meet for further consideration of possible recommendations on federal agency use of private attorneys. This subject is currently under study for the Administrative Conference by Professor Ronald Rotunda of the University of Illinois College of Law and by Professor William V. Luneburg of the University of Pittsburgh School of Law.

For further information concerning this meeting, contact David Pritzker, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW, Suite 500, Washington, DC. (Telephone: 202-254-7065.)

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify Mr. Pritzker at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Dated: March 4, 1987.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 87-4953 Filed 3-6-87; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council and the Council's Administrative Subcommittee will convene separate public meetings, March 17-19, 1987, at the Fisheries Research Laboratory of the Marine Resources Development Corporation (CODREMAR), State Road 102, Km. 8.6 (Interior), Bo. Punta Arenas, Cabo Rojo, PR, as follows:

Council

On March 18 will convene its 58th regular public meeting to address fishery management plans (FMPs) under development; discuss the result of billfish hearings; hear a preliminary report by the FMP Monitoring Committee; consider Scientific and Statistical Committee and Advisory Panel membership; consider possible negotiations with other Caribbean countries on fishing access, as well as consider other technical and administrative matters related to Council operations. The meeting will convene on March 18 from 9 a.m. to 3:30 p.m. and reconvene March 19 from 9 a.m. to noon. On March 19 the Council proposes to convene a closed session (not open to the public) from 3:30 p.m. to 5 p.m., to discuss information that is properly classified.

Administrative Subcommittee

On March 17 will convene at 2 p.m. and adjourn at 5 p.m., to discuss issues related to the Council's regular administrative operations.

For further information contact the Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, Puerto Rico 00918; telephone: (809) 753-4926.

Federal Register

Vol. 52, No. 45

Monday, March 9, 1987

Dated: March 3, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87-4851 Filed 3-6-87; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Amended Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The separate public meetings of the Gulf of Mexico Fishery Management Council's Personnel and Administrative Policy Committees will not be convened on March 10, 1987, as published previously in the *Federal Register* (52 FR 5566, February 25, 1987).

In lieu of the above meetings, the Council's Mackerel Committee instead will convene on March 10, 1987, from 1 p.m. to 5 p.m., to consider the rejection of Amendment #2 to the Fishery Management Plan for Coastal Migratory Pelagic Resources, and to consider the extension of emergency action on the Spanish mackerel fishery.

All other information remains unchanged.

For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228-2815.

Dated: March 3, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87-4852 Filed 3-6-87; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council's Reef Fish Scientific Task Team will convene a public meeting, March 31-April 1, 1987, at the Council's Office, Suite 881 (address below) to review the National Marine Fisheries Service's stock assessment reports and the Reef Fish Fishery Management Plan. For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln

Center, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228-2815.

Dated: March 3, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87-4853 Filed 3-6-87; 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will convene a public meeting, March 4, 1987, from 8:30 a.m. to approximately 5 p.m., at the King's Grant Inn, Danvers, MA, to discuss reports of the groundfish oversight committee; the Chairmen's meeting; the gillnet/recreational issue, as well as to discuss other fishery management and administrative matters.

For further information, contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route One), Saugus, MA 01906; telephone: (617) 231-0422.

Dated: March 3, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87-4854 Filed 3-6-87; 8:45 am]

BILLING CODE 3510-22-M

Travel and Tourism Administration

Travel and Tourism Advisory Board; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will meet on March 30, 1987 at 9:00 a.m. at Royal Hawaiian Hotel, Waikiki Beach, Honolulu, Hawaii. Location of meeting room will be identified on hotel meeting roster in Lobby.

Established March 19, 1982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and includes one member of a travel labor organization, a consumer advocate, an academician and a financial expert.

Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the National

Tourism Policy Act (Pub. L. 97-63), and provide guidance to the Assistant Secretary for Tourism Marketing in the preparation of annual marketing plans.

Agenda items are as follows:

- I. Call to Order
- II. Approval of the Minutes
- III. Old Business
 - A. USTTA Reorganization and New Directions
 - B. Review International Marketing Conference
- IV. New Business
 - A. International Expositions
 - B. USTTA Fee Structure Proposal
 - C. Pacific Basin Program
 - D. USTTA Official Representation Problems
- V. Miscellaneous
 - A. Establish next meeting date
- VI. Adjournment

A limited number of seats will be available to observers from the public and the press. The public will be permitted to file written statements with the Committee before or after the meeting. To the extent time is available, the presentation of oral statements is allowed.

Karen M. Cardran, Committee Control Officer, United States Travel and Tourism Administration, Room 1865, U.S. Department of Commerce, Washington, DC 20230 (telephone: 202-377-0140) will respond to public requests for information about the meeting.

Donna Tuttle,

Under Secretary for Travel and Tourism, U.S. Department of Commerce.

[FR Doc. 87-4915 Filed 3-6-87; 8:45 am]

BILLING CODE 3510-11-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Follow-on Forces Attack; Change in Date of Advisory Committee Meeting

SUMMARY: The meeting of the Defense Science Board Task Force on Follow-on Forces Attack scheduled for March 30-31, 1987 as published in the *Federal Register* (Vol. 52, No. 28, Page 4376, Wednesday, February 11, 1987, FR Doc. 87-2826) will be held on March 31 and April 1, 1987. In all other respects the original notice remains unchanged.

Dated: March 3, 1987.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 87-4866 Filed 3-6-87; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Image Recognition Systems; Change in Location of Advisory Committee Meeting

SUMMARY: The meeting of the Defense Science Board Task Force on Image Recognition Systems scheduled for March 10-12, 1987 as published in the *Federal Register* (Vol. 52, No. 28, Page 4376, Wednesday, February 11, 1987, FR Doc. 87-2827) will be held in the S.B. Research Center, Hughes Corporation, Santa Barbara, California. In all other respects the original notice remains unchanged.

Dated: March 3, 1987.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 87-4867 Filed 3-6-87; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Security Subgroup on Technological and Operational Surprise; ACTION: Change in Date of Advisory Committee Meeting

SUMMARY: The meeting of the Defense Science Board Task Force on Security Subgroup on Technological and Operational Surprise scheduled for March 17-18, 1987 as published in the *Federal Register* (Vol. 51, No. 243, Page 45381-45382, Thursday, December 18, 1986, FR Doc. 86-28351) will be held on April 1-2, 1987. In all other respects the original notice remains unchanged.

Dated: March 3, 1987.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 87-4868 Filed 3-6-87; 8:45 am]

BILLING CODE 3810-01-M

Special Operations Policy Advisory Group; Closed Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on 18 March 1987 in the Pentagon, Arlington, Virginia to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effective Special Operations Forces.

In accordance with section 10(d) of Pub. L. 92-463, the "Federal Advisory Committee Act," and section 552b(c)(1)

of Title 5, United States Code, this meeting will be closed to the public.

Patricia Means,

OSD Federal Register Liaison Department of Defense

March 3, 1987.

[FR Doc. 87-4865 Filed 3-6-87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 25 March 1987.

Time of Meeting: 0900-1700 hours.

Place: Headquarters, US Army Strategic Defense Command, Research Park, Huntsville, Alabama.

Agenda: The Army Science Board Ad Hoc Subgroup for Ballistic Missile Defense Follow-On will meet for briefings and discussions on technology transfer of SDIO to the tactical Army. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 895-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87-4869 Filed 3-6-87; 8:45 am]

BILLING CODE 3710-06-M

Department of the Navy

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Weapon Effectiveness Task Force will meet April 7-8, 1987, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review the Navy's ability to maximize weapon effectiveness through both hardware design and tactical employment, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense

and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: March 3, 1987.

Harold L. Stoller,

Commander, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 87-4880 Filed 3-6-87; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Laser Eye Protection will meet on March 19 and 20, 1987. The meeting will be held at the Pentagon, Washington, DC. The meeting will commence at 8:00 A.M. and terminate at 5:00 P.M. on March 19; and commence at 8:00 A.M. and terminate at 4:00 P.M. on March 20, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to review the current Navy and DOD R&D laser eye protection programs. The agenda will include technical briefings and discussions addressing the current and projected threat, cockpit compatibility, operational requirements and organizational responsibilities. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval

Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Dated: March 3, 1987.

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 87-4881 Filed 3-6-87; 8:45 am]

BILLING CODE 3810-AE-M

Navy Homeporting Plans for San Francisco Bay Region

Following the initial planning for U.S. Navy Homeporting within the San Francisco Bay area, the Treasure Island Naval Station was announced in 1985 as the preferred alternative for homeporting a Battleship Battlegroup. As detailed planning proceeded, including the development of applicable environmental impact information, it became apparent that due to excessive dredging requirements, potential Oakland Bay Bridge traffic, and requirements for Navy family housing, that Hunters Point instead should be, and therefore is now identified as the preferred alternative for homeporting the USS MISSOURI Battlegroup.

A Draft Environmental Impact Statement (DEIS) addressing the potential effects of constructing and operating a portion of the Battleship Battlegroup and a Cruiser Destroyer Group in the San Francisco Bay region will be filed shortly with the Environmental Protection Agency (EPA) and the public. The three proposed homeport sites to be examined are Naval Air Station (NAS) Alameda, Naval Station (NS) Treasure Island and NS Treasure Island, Hunters Point Annex. The Navy will not make a final decision on the homeport location until completion of the environmental documentation and review process sometime later in 1987.

Dated: March 2, 1987.

Harold L. Stoller,

CDR JAG Federal Register Liaison Officer.

[FR Doc. 87-4879 Filed 3-6-87; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Invitation for Applications for New Awards Under the Special Alternative Instructional Programs for Fiscal Year 1987 (CFDA No: 84.003E)

Purpose: Provides grants to local educational agencies (LEAs) and institutions of higher education applying jointly with one or more LEAs to

establish, operate, and improve Special Alternative Instructional Programs.

Deadline for transmittal or applications: April 24, 1987.

Deadline for intergovernmental review comments: June 23, 1987.

Applications available: March 11, 1987.

Available funds: \$1,000,000.

Estimated average size of awards: \$60,000.

Estimated number of awards: 17.

Additional factors: In accordance with 34 CFR 501.32(b), the Secretary, in evaluating applications under the published criteria, distributes an additional 15 points among the factors listed in §501.32(a) as follows: Historically underserved (4 points); Relative need (4 points); Geographic distribution (3 points); Relative number and proportion of children from low-income families (4 points).

Applicable regulations: (a) The Special Alternative Instructional Programs Regulations, 34 CFR 500-501, and (b) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79. (Note: Parts 500-501 were published in the Federal Register on June 19, 1986, at 51 FR 22422).

For applications or information contact: Robert Trifiletti, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, DC 20202. Telephone: (202) 245-2609.

Program authority: 20 U.S.C. 3231(A) (1).

Dated: March 2, 1987.

Carol Pendas Whitten,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 87-4892 Filed 3-6-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Atomic Energy Agreements; Proposed Subsequent Arrangement With Spain

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Spain concerning Civil Use of Atomic Energy, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM)

concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the aboved-mentioned agreements involves approval of the following retransfer: RTD/EU (SP)-16, for the transfer of approximately 125 grams of plutonium (approximately 80 percent fissile) from Spain to Belgonucleaire, Dessel, Belgium, for use in research and development of mixed oxide uranium-plutonium fuels.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: March 4, 1987.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87-4920 Filed 3-6-87; 8:45am]

BILLING CODE 6450-01-M

Intent To Award a Cooperative Agreement

AGENCY: Department of Energy (DOE).

ACTION: Notice of Restricted Eligibility for the Award of Cooperative Agreement Number DE-FC01-87RW00124 to the National Congress of American Indians (NCAI).

SUMMARY: The U.S. Department of Energy, Office of Civilian Radioactive Waste Management (OCRWM) announces that pursuant to 10 CFR 600.7(b), it is restricting eligibility for the award of Cooperative Agreement Number DE-FC01-87RW00124 to the National Congress of American Indians (NCAI). This cooperative agreement will ensure the participation of Indian tribal government organizations in planning and developing transportation and facilities for the disposition of high-level waste and spent nuclear fuel as provided by the Nuclear Waste Policy Act of 1982 (NWPA).

Eligibility: Award of this cooperative agreement has been limited to NCAI because of its unique qualifications as a non-profit Indian organization and its familiarity with the project. NCAI serves the interests of 150 American Indian and Alaskan Native governments representing 850,000 people, and has developed and demonstrated cumulative background knowledge and expertise in dealing with issues and activities

associated with the NWPA. Only NCAI provides the demonstrated capability to provide this needed liaison activity at this time.

The term of this cooperative agreement shall be sixty months, and the estimated value is \$1,247,520.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Karen A. McDonald, MA-453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Issued in Washington, DC, on February 26, 1987.

Stephen J. Michelsen,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 87-4921 Filed 3-6-87; 8:45 am]

BILLING CODE 6450-01-M

Draft Environmental Impact Statement, Remedial Action; at the Weldon Spring Site; Availability Announcement; Intent To Conduct Public Meetings and Hearing

AGENCY: Department of Energy.

ACTION: Notice of availability of draft environmental impact statement and of intent to conduct public meetings and hearing.

SUMMARY: The Department of Energy (DOE) has published a draft Environmental Impact Statement (DOE/EIS-117D), Remedial Action at the Weldon Spring Site. Written comments are invited and three public meetings and a public hearing will be held with respect to the draft environmental impact statement (DEIS).

DATES: The public meetings are scheduled on March 13 and 14, 1987. The public hearing is scheduled on April 10, 1987. Written comments should be received by April 20 in order to insure consideration in preparation of the final environmental impact statement. Requests to speak and preferred times should be received at DOE by March 30, 1987.

ADDRESSES: Written comments on the DEIS and requests to speak at the hearing should be addressed to: Rodney Nelson, Weldon Spring Site Remedial Action Project Office, U.S. Department of Energy, Route 2, Highway 94, South, St. Charles, Missouri 63303. Phone: (314) 441-8978.

FOR FURTHER INFORMATION YOU MAY CONTACT:

1. Rodney Nelson at the address above.
2. Carol Borgstrom, Acting Director, Office of Environment, Safety and Health, Office of NEPA Project Assistance, U.S. Department

of Energy, Washington, DC 20585. Phone: (202) 586-4610

3. Henry Garson, Assistant General Counsel of Environment, U.S. Department of Energy, Washington, DC 20585. Phone: (202) 586-6947

SUPPLEMENTARY INFORMATION:

I. Previous Notice of Intent

The DOE issued a Notice of Intent on March 2, 1984, regarding the preparation of an EIS and conduct of public scoping meetings for the remedial actions at the Weldon Spring site.

II. Scope of the DEIS

The DEIS is issued by the DOE and it assesses the environmental impacts of several alternatives for long-term management of the wastes associated with remedial action activities at the Weldon Spring site located about 30 miles west of St. Louis, Missouri. The site is currently contaminated as a result of processing of uranium, thorium, and other materials previously carried out at the site. The Weldon Spring Site consists of four areas: raffinate pits, quarry, chemical plant, and vicinity properties. The alternatives considered are (1) long-term management in the existing raffinate pits with improved containment, (2) long-term management in the raffinate pits area in a new disposal cell (DOE's preferred alternative), (3) long-term management at another site, and (4) no action. Alternative 2 has two subalternatives: (a) the disposal cell is located partially above grade, and (b) the disposal cell is located completely above grade. Alternative 3 has three subalternatives: (a) Disposal of the wastes at Hanford, (b) disposal of the wastes at "nearby site" within 100 miles of Weldon Spring, and (c) reprocessing of the raffinate and quarry sludge at an existing facility in the Four Corners area with disposal of the remaining wastes in the existing raffinate pits. The potential geological, hydrological, radiological, chemical, ecological, air quality, land-use, and socioeconomic impacts associated with each alternative are assessed and compared for the remedial action period and for the long term.

III. Summary of Impacts

Implementation of any of the alternatives would permanently commit some land to waste management. The smallest land commitment would be 11 ha (28 acres) for Alternative 3c at Weldon Spring, neglecting the land commitment at the uranium processing site for storage of the mill tailings; the highest land commitment would be 120 ha (300 acres) for Alternative 3a at the Hanford site. Implementation of any of

the action alternatives would lead to increased risk of injury and death associated with transportation of wastes and fill materials, ranging from 0.096 deaths and 1.6 injuries for Alternatives 1 and 2a to 2.5 deaths and 34 injuries for Alternative 3a (transport of all wastes to the Hanford site).

Radiological impacts (health effects—primarily increased risk of death from cancer) would be insignificant for all alternatives. During the action period, radiation doses to the general public from implementing the action alternatives would range from 31 to 250 person-rem (0.0053 to 0.043 health effects). Workers would incur doses of 110 to 230 person-rem (0.019 to 0.039 health effects). During the long term, estimated cumulative radiological impacts over 1,000 years range from 130 to 520 person-rem (0.022 to 0.088 health effects) for the action alternatives and 11,000 person-rem (1.9 health effects) for the no-action alternative. For comparison, over 1,000 years the exposed population near the Weldon Spring site would receive 230,000,000 person-rem from background radiation and 4,200,000 cancer deaths would normally be expected from other causes.

For all action alternatives, radionuclides are not expected to reach the groundwater table under the disposal areas within 1,000 years. Several chemical species are expected to reach the groundwater table under the disposal areas within 1,000 years. However, maximum concentration contributions under the disposal areas and at the site boundaries are expected to be below regulatory limits.

If action is taken and the wastes are removed from the quarry, the maximum concentration contribution of uranium at the county well field is estimated to be 0.033 pCi/L in 800 years. This estimated concentration contribution is very small in comparison to the reported background uranium concentration of <1.5 to <3.6 pCi/L. If no action is taken and the wastes are not removed, the maximum concentration is estimated to be 0.2 pCi/L in 1,700 years.

IV. Comment Procedures

A. Availability of DEIS

Copies of the DEIA have been distributed to Federal, State, and local agencies, organizations, and to individuals known to be interested in the Weldon Spring Site remedial actions.

Additional copies may be obtained from Rodney Nelson at the address given above.

Copies of the DEIS are available for public inspection at the following:

St. Charles City-County Libraries—(1) Spencer Creek Branch, St. Peter's, MO., (2) Linnemann Branch, St. Charles, MO., (3) Corporate Parkway Branch, Wentzville, MO., and (4) O'Fallon Plaza Branch, O'Fallon, MO.

Lindenwood College, Butler Library, Environmental Education Section, St. Charles, MO.

B. Written Comments

Interested parties are invited to provide written comments on the DEIS to Rodney Nelson at the address given above. Comments should be identified on the outside of the envelope with the designation "DEIS Comments." All comments and related information should be received by DOE by April 20, 1987, in order to ensure consideration in preparing the final EIS.

Any material not accompanied by a statement of confidentiality will not be considered to be confidential. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

C. Public Meetings

Three public information meetings will be held close to the project site. The meetings are scheduled for Friday, March 13, at 1:00 p.m. at the Wentzville Ramada Inn, 900 Corporate Parkway, Wentzville, again at 7:00 p.m. at Hollenbeck Junior High, 4555 Central School Road, St. Charles, and on Saturday, March 14 at 10:00 a.m. at Lindenwood College, 200 College Drive, St. Charles. DOE will begin each meeting by explaining the organization of the DEIS and describing the information included in the document. To facilitate public review, after the formal presentation individuals will be afforded the opportunity to ask questions on the organization and content of the DEIS.

D. Public Hearing

1. Participation Procedure

A public hearing on the DEIS will be held on April 10, 1987, at Lindenwood College, 200 College Drive, St. Charles, at 7:30 p.m. A DOE official will designate a presiding officer to chair the hearing. This will not be a judicial or evidentiary-type hearing but solely for the purpose of providing the opportunity for public comment and input during the EIS process.

Any person who desires to speak at the hearing should notify Rodney Nelson by March 30, 1987, so that time can be scheduled. Although not required, persons who intend to speak are

encouraged to provide a brief summary of the presentation.

Individuals who did not make an advance arrangement to speak may register to speak at the hearing. After all scheduled speakers, an opportunity will be provided for these individuals to speak. Time for each participant will be limited depending on time available and the number of responses.

2. Conduct of Hearing

DOE will arrange the schedule of presentations to be heard and will establish basic rules and procedures for conducting the hearing. The length of each presentation may be limited, depending on the number of persons desiring to speak.

Questions may be asked only by those conducting the hearing and there will be no cross-examination of persons presenting statements.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer at the start of the hearing.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the same locations as listed above for review of the DEIS (Section IV A). Any person may purchase a copy of the transcript from the reporter.

Issued at Washington, DC, 1987.

A. David Rossin,

Assistant Secretary for Nuclear Energy.

[FR Doc. 87-4822 Filed 3-6-87; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket Nos. OFU 017, 018, 019, 020 and 021]

Order Granting Rescission of Certain Prohibition Orders Issued to Kansas Power and Light Co. Pursuant to the Energy Supply and Environmental Coordination Act of 1974

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order granting rescission.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE)¹ hereby gives notice

¹ Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy Administration (FEA) to the Department of Energy pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*).

that, acting under the authority granted to it is section 2(f) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended (15 U.S.C. 792(f) and implemented by 10 CFR

Owner	Docket No.	Generating station	Unit No.	Location
Kansas Power and Light Company.	OFU-017	Lawrence	3	Lawrence, KS
	OFU-018	Lawrence	4	Lawrence, KS
	OFU-019	Lawrence	5	Lawrence, KS
	OFU-020	Tecumseh	9	Tecumseh, KS
	OFU-021	Tecumseh	10	Tecumseh, KS

This action is taken in accordance with the provisions of 10 CFR Part 303, Subpart J ("Modification on Rescission of Prohibition Orders and Construction Orders") of the ESECA regulations. The basis for ERA's action is provided in the **SUPPLEMENTARY INFORMATION** section below.

EFFECTIVE DATE: March 9, 1987, in accordance with 10 CFR 303.10(a).

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-093, Washington, DC 20585 Telephone (202) 586-6947

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue SW., Room GA-113, Washington, DC 20585 Telephone (202) 586-6947

The public file containing a copy of this Order and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m.

SUPPLEMENTARY INFORMATION: On April 15, 1986, KPL submitted an application for Rescission of Prohibition Orders to ERA regarding the above enumerated generating station units. KPL informed ERA that its Lawrence units 3 and 4 and Tecumseh units 9 and 10 will operate at annual capacity factors below 40 percent throughout their remaining useful life. Lawrence unit 5 will operate at an annual capacity factor below 45 percent throughout its remaining useful life. These units are expected to be used only for peaking or intermediate duty. Rescission of the Prohibition Orders would allow KPL to realize fuel, generating capacity and maintenance cost savings which would benefit their customers. The Company estimates that it will save as much as six million dollars in 1987, in fuel costs if it switched completely to natural gas.

303.130(b), it is granting a request by The Kansas Power and Light Company (KPL) to rescind the prohibition orders issued on June 30, 1975, to the following powerplants:

In accordance with the procedural requirements of 10 CFR 303.134(a), ERA published its Notice of Acceptance of a request by KPL to rescind certain prohibition orders issued to the company pursuant to the ESECA in the *Federal Register* on December 4, 1986 (51 FR 43767), commencing a 45-day public comment period. During that period interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed January 20, 1987. No comments were received and no hearing was requested.

Decision and Order: Accordingly, based upon information received from KPL and the entire record of this proceeding, ERA had determined that as a result of significantly changed circumstances with respect to the prohibition orders issued to KPL's Lawrence 3, 4 and 5 and Tecumseh 9 and 10 generating units as set forth in 10 CFR 303.136(b), that these powerplants should be allowed to operate as peakload or intermediate units. Pursuant to § 303.137(a) ERA hereby grants the rescission request of KPL and hereby orders that the prohibition orders to these units be rescinded.

Pursuant to 10 CFR 303.100(a) and (b), any person aggrieved by this order has not exhausted his administrative remedies until an appeal has been filed with DOE's Office of Hearing and Appeals and an order granting or denying the appeal has been issued. Such appeal must be filed within 10 days of the publication of this order in the *Federal Register* in accordance with the requirements of § 303.102.

Issued in Washington, DC on February 26, 1987.

Robert L. Davies,

Director, Office of Fuels Program, Economic Regulatory Administration.

[FR Doc. 87-4824 Filed 3-6-87; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 87-09-NG]

Natural Gas Imports; Tex-Ana Gas Co.; Application to Import Natural Gas From Canada and/or Mexico**AGENCY:** Economic Regulatory Administration, Department of Energy.**ACTION:** Notice of application of blanket authorization to import natural gas from Canada and/or Mexico for short-term and spot sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on February 11, 1987, of the application of Tex-Ana Gas Company (Tex-Ana), a division of Agronomics, Inc., for blanket authorization to import up to a total of 100 Bcf of natural gas during a two-year term beginning on the date of first delivery. The natural gas would be purchased from a variety of Canadian and/or Mexican suppliers. The natural gas would be sold in the U.S. on a short-term and spot market basis to such purchasers as local distribution companies, electric utilities, agricultural users, pipelines and industrial and commercial end-users. Tex-Ana would import the gas for its own account or as an agent for Canadian and/or Mexican suppliers and/or U.S. purchasers. The firm intends to use existing facilities to transport the import gas, and proposes to inform the ERA of the date of its first transaction, and to file quarterly reports to the ERA. Tex-Ana proposes to file the quarterly reports within 40 days following each calendar quarter and states that they would show the details of each transaction including: parties, price, volume, transporters, term of the agreements, take-or-pay or make-up provisions, if any, points of entry, and markets served.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than April 8, 1987.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9482
Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that the import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become party to this proceeding and to have written comments considered as a basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. April 8, 1987.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision on the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate

why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Tex-Ana's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 27, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-4823 Filed 3-6-87; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-87-24; OFP Case No. 64015-9338-20-24]

Acceptance of Petition for Exemption and Availability of Certification; Lowell Cogeneration Co., Stamford, CT

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance.

SUMMARY: On December 17, 1986, Lowell Cogeneration Company (Lowell or the petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption based on the "lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum" for a proposed 27 megawatt combined cycle gas turbine generating unit to be located in Lowell, Massachusetts, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning

for exemptions from the prohibitions of title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures for petitioning for this type of exemption from the prohibitions of Title II of FUA are found in 10 CFR 503.32.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register**.

DATES: Written comments are due on or before April 23, 1987. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-093, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

Docket No. ERA-C&E-87-24 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT: Frank Duchaine, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-093, Washington, DC 20585. Telephone (202) 586-8233

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue SW., Washington, DC 20585. Telephone (202) 586-6947

SUPPLEMENTARY INFORMATION: Lowell Cogeneration Company proposes to build a facility consisting of a 27 MW gas-fired combined cycle facility to be located in Lowell, Massachusetts. Lowell intends to operate the facility as a cogeneration plant providing electricity to a utility and steam to an industrial user.

Section 212(a)(1)(A)(ii) of the Act provides for a permanent exemption due to lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. To qualify the petitioner, pursuant to 10 CFR 503.32(a), must certify that:

(1) A good faith effort has been made to obtain an adequate and reliable supply of an alternate fuel for use as a primary energy source of the quality and quantity necessary to conform with the design and operational requirements of the proposed unit;

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source during the useful life of the proposed unit as defined in § 503.6 (cost calculation) of the regulations;

(3) No alternate power supply exists, as required under § 503.8 of the regulations;

(4) Use of mixtures is not feasible, as required under § 503.9 of the regulations; and

(5) Alternative sites are not available, as required under § 503.11 of the regulations.

In accordance with the evidentiary requirements of § 503.32(b) (and in addition to the certifications discussed above), the petitioner has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 500 *et seq.*; and DOE guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment.

If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as

soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Lowell is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC on March 2, 1987.

Robert L. Davies,
Director, Office of Fuels Programs, Economic
Regulatory Administration.

[FR Doc. 87-4825 Filed 3-6-87; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-87-03; OFP Case No. 65041-9330-20-24]

Order Granting O'Brien Energy Systems Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order granting exemption.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), to O'Brien Energy Systems (O'Brien). The permanent cogeneration exemption permits the use of natural gas for the proposed cogeneration facility to be located in Salinas, California. The final exemption order and detailed information are provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The order shall take effect on May 8, 1987.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Boyd, Coal and Electricity Division, Office of Fuels Programs, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20585. Telephone (202) 586-4523.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building—Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586-6749.

SUPPLEMENTARY INFORMATION: On October 22, 1986, O'Brien Energy Systems petitioned ERA for a permanent cogeneration exemption from the prohibitions of FUA for a facility consisting of a gas turbine which will operate at base load, in conjunction with a hot gas generator and one three level pressure heat recovery boiler with a supplementary duct burner capable of producing 163,000 lb/hr of high pressure steam. The facility will use natural gas. Merchants Refrigeration (MR) will purchase all the refrigerant output of the facility, which will be utilized for cold storage. Salinas Tallowing and Semplot Foods will purchase the steam output. The electrical production of the facility will be purchased by Pacific Gas and Electric (PS&E).

Procedural Requirements: In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the *Federal Register* on November 28, 1987, commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing.

The comment period closed on January 12, 1986; no comments were received and no hearing was requested.

Order Granting Permanent Cogeneration Exemption: Based upon the entire record of this proceeding, ERA has determined that the petitioner has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to O'Brien Energy Systems, to permit the use of natural gas as the primary energy source for its cogeneration facility.

Pursuant to section 702(c) of the Act of 10 CFR 501.69, any persons aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the *Federal Register*.

Issued in Washington, DC on February 27, 1987.

Robert L. Davies,
Director, Office of Fuels Programs, Economic
Regulatory Administration.

[Docket No. ERA-C&E-87-25; OFP Case No. 52371-1572-25, 26-22]

Acceptance of Petition from Potomac Electric Power, for Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance.

SUMMARY: On December 31, 1986, Potomac Electric Power Company (PEPCO), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*) for two combined cycle facilities of approximately 375 MW each. The exemption request is based on a lack of alternate fuel supply at a cost which does not substantially exceed the cost using imported petroleum. Title II of FUA prohibits the use of petroleum and natural gas as a primary energy source in new electric powerplants and prohibits the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501 and 503. Final rules setting forth criteria and procedures for petitioning for this type exemption are found in 10 CFR 503.32.

The gas-fired turbines to be used in these combined cycle facilities are the subject on an independent contemporaneous petition submitted by PEPCO. PEPCO proposes to construct and operate four gas-fired turbines as peaking units in 1994, 1995, 1996 and 1997, respectively, and has requested a peakload exemption (see companion notice). After 1997, PEPCO intends to add heat recovery steam generators and steam turbines that will result in the two combined cycle facilities discussed in this notice.

ERA has determined that the petition and certification for the requested exemption is complete in accordance with the final rules under 10 CFR 501.3 and 501.63. ERA hereby accepts the filing of the petition for the permanent exemption as adequate for filing. ERA retains the right to request additional relevant information from PEPCO at any

time during these proceedings where circumstances or procedural requirements may so require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in section 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33 of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday thru Friday, 9:00 a.m.-4:00 p.m.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension will be published in the *Federal Register*.

DATES: Written comments are due on or before April 23, 1987. A request for public hearing must also be made within this 45 day public comment period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing should be submitted to the Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, Room GA-093, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA-C&E-87-25 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Office of Fuels Programs, Coal & Electricity Division, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20585, Phone (202) 586-4708

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A-113, Washington, DC 20585, Phone (202) 586-6947.

SUPPLEMENTARY INFORMATION: Section 212(a)(1)(A)(ii) of the Act provides for a permanent exemption due to lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. PEPCO is

requesting such an exemption for two 375 gas-fired combined-cycle units to be located at its Dickerson Station in Montgomery County, Maryland. The facilities are scheduled for service in 1998 and 1999, respectively. The units will be designed to burn either natural gas or No. 2 fuel oil as primary fuels. With minor modification the units will also be capable of burning medium Btu gas derived from coal. PEPCO has undertaken conceptual engineering for a combined cycle coal gasification facility which includes considerations for the use of one of the Dickerson combine cycle units for research and development purposes.

Section 503.32(a) of the regulations establishes the eligibility requirements for a permanent exemption due to lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. To qualify the petitioner must certify that:

(1) A good faith effort has been made to obtain an adequate and reliable supply of an alternate fuel for use as a primary energy source of the quality and quantity necessary to conform with the design and operational requirements of the proposed unit;

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source during the useful life of the proposed unit as defined in § 503.6 (cost calculation) of the regulations;

(3) No alternate power supply exists, as required under § 503.8 of the regulations;

(4) Use of mixtures is not feasible, as required under § 503.9 of the regulations; and

(5) Alternative sites are not available, as required under § 503.11 of the regulations.

In accordance with the evidentiary requirements of § 503.32(b) (and in addition to the certifications discussed above), PEPCO has included as part of its petition:

(1) Exhibits containing the basis for the certifications described above; and

(2) An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR 1500 *et seq.*; and DOE guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption

would not be considered a major Federal action significantly affecting the quality of the environment.

If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the *Federal Register* as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that PEPCO is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC on March 2, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-4827 Filed 3-6-87; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-87-19; OFP Case No. 52371-1572-21,22,23,23-22]

Acceptance of Petition From Potomac Electric Power Co. for Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance.

SUMMARY: On December 31, 1986, Potomac Electric Power Company (PEPCO), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting four proposed new peakload powerplants at the company's Dickerson site in Montgomery County, Maryland, from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501 and 503. Final rules setting forth criteria and procedures for petitioning for this type exemption are found in 10 CFR 503.41.

The four gas-fired combustion turbines are the subject of an independent contemporaneous petition submitted by PEPCO. PEPCO intends to

add two heat recovery steam generators and steam turbines that will result in two combined cycle facilities each having a capacity of 375 MW to be base-loaded after 1997. The petition for a permanent exemption for the expanded facility is based on the lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum (see companion notice).

ERA has determined that the petition and certification for the requested exemption is complete in accordance with the final rules under 10 CFR 501.3 and 501.63. ERA hereby accepts the filing of the petition for the permanent exemption as adequate for filing. ERA retains the right to request additional relevant information from PEPCO at any time during these proceedings where circumstances or procedural requirements may so require. A review of the petitions provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in section 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33 of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension will be published in the *Federal Register*.

DATES: Written comments are due on or before April 23, 1987. A request for public hearing must also be made within this 45-day public comment period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing should be submitted to the Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, Room GA-093, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA-C&E-87-19 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:
Xavier Puslowski, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20585, Telephone: (202) 586-4708

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A-113, Washington, DC 20585, Telephone: (202) 586-6947

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. PEPCO requested a permanent peakload exemption for the construction and operation of 125 MW gas-fired combustion turbines for service in 1994, 1995, 1996 and 1997 respectively. These units will be designed to burn either natural gas or No. 2 fuel oil. The units will be operated less than 1500 hours per year.

Under the requirements of 10 CFR 503.41(a)(2)(ii), if a petitioner proposes to use natural gas or to construct a powerplant to use natural gas in lieu of an alternate fuel as a primary energy source, the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency must certify to ERA that the use by the powerplant of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded. However, since ERA has determined that there are no presently available alternate fuels which may be used in the proposed powerplant, no such certification can be made. The certification requirement is therefore waived with respect to the PEPCO petition.

PEPCO submitted a certified statement by a duly authorized officer to the effect that the proposed oil and/or gas-fired combustion turbine-generators will be operated as a peakload powerplant.

On February 23, 1982, DOE published in the *Federal Register* (47 FR 7676) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of certain FUA permanent exemptions, including the permanent exemption for peakload powerplants, is among the classes of

actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement of an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly effect the quality of the human environment. PEPCO has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new units under exemption.

OGE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by PEPCO pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on PEPCO's petition that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

As provided in 10 CFR 501.3(b)(4), the acceptance of the petition by ERA does not constitute a determination that PEPCO is entitled to the exemption requested. That determination will be made on the basis of the entire record of these proceedings, including any comments received in response to this document.

Issued in Washington, DC on March 2, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-4828 Filed 3-6-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. QF87-263-000 et al.]

Chevron U.S.A. Inc. and Western States Geothermal Company et al.; Small Power Production and Cogeneration Facilities; Qualifying Status Certificate Applications, Etc.

March 2, 1987.

Comment date: Thirty days from publication in the *Federal Register*, in accordance with Standard Paragraph E at the end of the notice.

Take notice that the following filings have been made with the Commission.

1. Chevron U.S.A. Inc. and Western States Geothermal Co.

[Docket No. QF87-263-000]

On February 13, 1987, Chevron U.S.A. Inc. and Western States Geothermal Company (Applicant), c/o Chevron

Resources Company, P.O. Box 7147, San Francisco, California 94120-7147, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located near Soda Lake, Nevada. The facility will consist of three skid-mounted power plants (Ormat Energy Converters). The net electric power production capacity will be 2.4 MW. The primary energy source will be geothermal resources.

2. Warren Petroleum Co.

[Docket No. QF87-114-001]

On February 9, 1987, Warren Petroleum Company (Applicant), of P.O. 1589, Tulsa, Oklahoma 74102 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

Recertification of the facility is requested due to the change in the configuration of the facility. The proposed facility will consist of one combustion turbine-generator with electric power production capacity of 10 MW instead of three combustion turbine-generators with a total electric power production capacity of 60 to 75 MW as originally proposed. All other facility's characteristics remain the same as originally proposed and certified (Docket No. QF87-114-000, 31 FERC ¶ 62,111).

3. Wehran Energy Corp.

[Docket No. QF87-63-000]

On February 2, 1987, Wehran Energy, Corp. (Applicant), of 666 East Main Street, Middletown, New York 10940, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Goshen, New York. The facility will consist of two (2) internal combustion engine generator sets. The electric power production capacity will be 800 kilowatts. The primary energy source will be biomass in the form of methane gas, recovered from the Al Turi Sanitary Landfill. There is no planned usage of natural gas, oil or coal at this facility.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-4885 Filed 3-6-87; 8:45 am]

BILLING CODE 6717-04-M

[Docket Nos. ER87-264-000 *et al.*]

Sierra Pacific Power Co. et al.; Electric Rate and Corporate Regulation Filings

March 3, 1987.

Take notice that the following filings have been made with the Commission:

1. Sierra Pacific Power Co.

[Docket No. ER87-264-000]

Take notice that on February 24, 1987, Sierra Pacific Power Company (Sierra) tendered for filing a Notice of Cancellation of the Loop Flow Agreement between the Western Systems Coordinating Council (WSCC) and its participating members and Sierra, FERC Rate Schedule No. 20.

Sierra requests termination of said Agreement as of August 31, 1985, pursuant to its terms.

Copies of this filing have been served upon all of WSCC's participating members.

Comment date: March 17, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Alabama Power Company.

[Docket No. ER 87-265-000]

Take notice that Alabama Power Company ("APCO") on February 24, 1987 tendered for filing Amendment No. 4 to its Agreement for Transmission Service to Distribution Cooperative Customers of Alabama Electric Cooperative, Inc., which Agreement is designated Rate Schedule FERC No. 147.

APCO states that the amendment to the Agreement is necessary to include

within the transmission service specified in the Agreement the transmission of the output of "off-system" generating units of Alabama Electric Cooperative, Inc., which will be connected to APCO's system. The Company is requesting that Amendment No. 4 be permitted to be effective immediately upon acceptance for filing by the Commission.

Copies of the filing were served upon Alabama Electric Cooperative, Inc.

Comment date: March 17, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Central Hudson Gas & Electric Corp.

[Docket No. ER87-267-000]

Take notice that Central Hudson Gas & Electric Corporation (Central Hudson) on February 25, 1987 tendered for filing as a supplement to its Rate Schedule FERC No. 22 a letter of agreement and notification dated February 9, 1987 between Central Hudson and New York State Electric and Gas Corporation. Central Hudson states that this letter provides for a decrease in the monthly facilities charge from \$6,903.08 to \$6,060.58 in accordance with Article IV.1 of its Rate Schedule FEC No. 22, a decrease in the monthly Transmission Charge from \$5,675.81 to \$4,576.80 in accordance with Articles V and VI of its Rate Schedule FERC No. 22 and an increase in the annual Operation and Maintenance Charge from \$3,402.53 to \$3,572.66 in accordance with Article IV.2. of its Rate Schedule FERC No. 22. Central Hudson requests waiver of the notice requirement of Subsection 35.3 of the Commission's Regulations to permit this proposed increase to become effective January 1, 1987.

Copies of filing by Central Hudson were served upon: New York State Electric and Gas Corporation, 4500 Vestal Parkway, East, Binghamton, NY 13902.

Comment date: March 17, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Houston Lighting & Power Co.

[Docket No. ER83-657-001]

Take notice that in accordance with the settlement approved and adopted by the Commission's letter order in *Public Service Company of Oklahoma, et al.*, Docket Nos. ER82-545-000, *et al.*, issued January 27, 1987, Houston Lighting & Power Company ("HL&P") submitted for filing, on February 25, 1987, its Compliance Tariff for Transmission Service To, From and Over Certain HVDC Interconnections and Rate Schedule 1 setting forth the rate for service thereunder as approved and

ordered by the Commission in the Order Approving Settlement. These rates will take effect February 26, 1987.

Copies of this filing have been served upon all parties to this proceeding.

Comment date: March 17, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Nevada Power Co.

[Docket No. ER87-272-000]

Take notice that on February 26, 1987, Nevada Power Company (NPC) tendered for filing a Notice of Cancellation of the Western Systems Coordinating Council (WSCC) Loop Flow Agreement between NPC, Southern California Edison Co., *et al.*, FERC Rate Schedule 38, which establishes procedures for minimizing inadvertent power flow over parallel paths.

NPC requests to cancel said Agreement effective August 31, 1985.

Copies of this filing have been served upon the Public Service Commission of Nevada, and the signatories to the Agreement.

Comment date: March 18, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corp.

[Docket No. ER87-276-000]

Take notice that Niagara Mohawk Power Corporation ("Niagara Mohawk"), on February 27, 1987, tendered for filing an agreement between Niagara Mohawk and Orange & Rockland Utilities, Inc. ("O&R") dated December 1, 1986, providing for certain transmission services to O&R. This agreement supersedes and amends Niagara Mohawk FERC Rate Schedule No. 89.

The December 1, 1986 agreement provides for the addition of the new service of the transmission and delivery to O&R of certain energy generated at the New York Power Authority's Blenheim-Gilboa Pumped Storage Hydroelectric Plant ("Gilboa") and for a change in the rate charged O&R for the transmission and delivery to O&R of certain power and energy generated at the Gilboa plant and at the Authority's FitzPatrick Nuclear Plant. O&R has consented to both changes.

The proposed changes would increase revenues from jurisdictional services by \$61,837 based on the twelve months ending August 31, 1988. Effective dates of December 1, 1986 (for the commencement of transmission and delivery of Gilboa energy) and September 1, 1987 (for the change in rates) are proposed. Niagara Mohawk states that waiver of the notice

requirements of 18 CFR 35.3 is warranted because O&R, the only customer under Rate Schedule No. 89, has requested the additional service, has consented to the effective dates, and the practices of (O&R and Niagara Mohawk has been to make rate changes under Rate Schedule 89 effective September 1.

Copies of this filing have been served upon O&R and the New York State Public Service Commission.

Comment date: March 18, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Co. of New Hampshire

[Docket No. ER87-277-000]

Please take notice that on February 27, 1987 Public Service Company of New Hampshire ("PSNH") tendered a rate filing with the Commission increasing wholesale revenues by \$6,602,729 or 27.4% in Period II, which is calendar year 1987. The Company requests that the filing be permitted to become effective on May 1, 1987.

The six affected wholesale customer and the FERC rate schedule designations of their contracts are as follows:

Town of Ashland, New Hampshire—FERC No. 28
The New Hampton (New Hampshire) Village Precinct—FERC No. 29
New Hampshire Electric Cooperative, Inc.—FERC Nos. 50 and 71
Town of Wolfeboro, New Hampshire—FERC No. 72
Citizens Utilities Company—FERC No. 110

The changes in rates effected by this filing may be summarized as follows:

	Existing	Proposed
Demand Charge (per KVA per month).....	5.40	7.50
Energy Charge (per KWH).....	0.02671	0.03517
Customer Charge (per delivery point per month).....	160.00	500.00
Low Voltage Delivery Charge (per KVA per month).....	0.25	0.50

The Company states that it has served copies of its filing on its wholesale customers and the New Hampshire Public Utilities Commission and the Vermont Public Utilities Board.

Comment date: March 18, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Co. of Oklahoma

[Docket No. ER82-545-002]

Take notice that on February 26, 1987, Public Service Company of Oklahoma, Southwestern Electric Power Company,

Central Power and Light Company and West Texas Utilities Company (the "CSW Operating Companies") submitted for filing, in accordance with the Commission's letter order in these proceedings issued January 27, 1987, certain revised transmission service tariffs.

Copies of this filing have been served on all parties to these proceedings and on the Public Utility Commission of Texas, the Louisiana Public Service Company, the Oklahoma Corporation Commission and the Arkansas Public Service Company.

Comment date: March 17, 1987, in accordance with Standard Paragraph E at the end of this notice.

9. System Energy Resources, Inc.

[Docket No. ER82-616-031]

Take notice that on February 17, 1987, System Energy Resources, Inc. (SERI) tendered for filing pursuant to Ordering Paragraph (L) of FERC Opinion No. 234, 3 FERC ¶ 61,305 (1985) and the Order Rejecting Proposed Decommissioning Expense Trust Fund and Granting Intervention, 37 FERC ¶ 61,261 (1986) six copies of a proposed Nuclear Decommissioning Trust Fund Agreement between SERI and Irving Trust Company, as Trustee. The proposed Nuclear Decommissioning Trust Fund Agreement establishes an external sinking fund under the control of an independent trustee for accumulation of money intended to compensate for SERI's share of anticipated decommissioning expenses for Grand Gulf Unit 1.

Comment date: March 17, 1987, in accordance with Standard Paragraph E at the end of this notice.

10. Puget Sound Power & Light Co.

[Docket No. ER87-275-000]

Take notice that Puget Sound Power & Light Company ("Puget") on February 27, 1987 tendered for filing proposed changes in its Supplement No. 5 to the General Transfer Agreement between Puget and the United States of America, Department of Interior acting by and through the Bonneville Power Administrator, ("Bonneville") Contract No. 14-03-001-11487. (Puget Sound Power & Light Company Supplement No. 10 to Rate Schedule FPC No. 16). The proposed changes would increase revenue from jurisdictional service under Supplement No. 5 by the following amounts for each of the following 12-month periods:

12-month period	Increase in revenues
April 1977 to March 1978	\$348,288.30
April 1978 to March 1979	351,990.88
April 1979 to March 1980	354,752.38
April 1980 to March 1981	355,270.38
April 1981 to March 1982	352,337.58
April 1982 to March 1983	350,238.18
April 1983 to March 1984	348,628.18
April 1984 to March 1985	350,700.18
April 1985 to March 1986	350,238.18
April 1986 to March 1987	¹ 351,428.18
April 1987 to March 1988	¹ 347,130.18

¹ Estimated.

The change in the rate schedule is necessary to reflect an increase in the transfer demand limit from 15,000 kw to 46,000 kW, the upgraded of Puget's transmission facilities from 55 kV to 115 kV, and the increase in Puget's costs to provide service at the increased voltage and transfer demand limit. Puget and Bonneville have agreed upon an effective date for the change of 2400 hours on March 31, 1977, when service at the increased voltage and transfer demand limit commenced.

Copies of the filing were served upon Bonneville.

Comment date: March 18, 1987, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385. 211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-4882 Filed 3-6-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS72-336, et al.]

MBank Fort Worth, N.A., Temporary Administrator of the Thelma Ford Simmons Estate (D.J. Simmons, Estate), et al.; Applications for Small Producer Certificates¹

March 3, 1987.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a small producer certificate of public convenience and necessity authorizing

the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 19, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with

the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

Docket No.	Date filed	Applicant
CS72-336.....	¹ 2-6-87	MBank Fort Worth, N.A., Temporary Administrator of the Thelma Ford Simmons Estate (D.J. Simmons, Estate), P.O. Box 910, Fort Worth, Texas 76102.
CS75-286.....	³ 2-9-87	Howard Hampton, Inc. (Howard Hampton), P.O. Box 72, Metairie, Louisiana 70004.
CS75-430.....	⁴ 2-3-87	Martin Exploration Management Company (a Colorado limited partnership) (Martin Oil Service, Inc.), c/o Kirkland & Ellis, 655 Fifteenth Street, NW., Washington, DC 20005.
CS87-37-000.....	1-28-87	Twenty/Twenty Oil & Gas Inc., P.O. Box 247, Hennessey, Oklahoma 73742.
CS87-38-000.....	1-27-87	Pipeline Service Company, 3514 Fifth Avenue, Pittsburgh, Pennsylvania 15213.
CS87-39-000.....	1-27-87	AGCO Petroleum Co., 1300 Main Street, Suite 1435, Houston, Texas 77002.
CS87-40-000.....	1-29-87	States, Inc., P.O. Box 911, Breckenridge, Texas 76024.
CS87-41-000.....	1-29-87	ITR Petroleum, Inc., 1300 Main Street, Suite 512, Houston, Texas 77002.
CS87-42-000.....	1-29-87	Bruce L. Shannon and Bruce L. Shannon d.b.a. Shannon Energy and Shannon Energy Corp., P.O. Box 6026, Liberal, Kansas 67901.
CS87-43-000.....	2-3-87	South Timbers Limited Partnership and Cross Timbers Partners, 810 Houston Street, Suite 2000, Fort Worth, Texas 76102.
CS87-44-000.....	2-9-87	Quarles Drilling Corporation, 7633 East 63rd Place, Suite 500, Tulsa, Oklahoma 74133.
CS87-45-000.....	2-9-87	Rayden, P.O. Box 1111, Monahans, Texas 79756.
CS87-46-000.....	2-18-87	Terish Baker, d.b.a. Baker Petroleum Company, P.O. Box 2864, Corpus Christi, Texas 78403.
CS87-47-000.....	2-19-87	Geodyne Production Company, 320 South Boston Avenue, the Mezzanine, Tulsa, Oklahoma 74103.
CS87-48-000.....	2-19-87	Kenrell Petroleum Resources, Inc., 4545 Post Oak Place, Suite 250, Houston, Texas 77027.
CS87-49-000.....	2-20-87	Ibex Partnership, P.O. Box 911, Breckenridge, Texas 76024.
CS87-50-000.....	2-24-87	ODY Oil Corporation and ETC Oil Corporation, 246 Industrial Parkway, Lafayette, Louisiana 70508.
CS87-51-000.....	2-25-87	Bayshore Production Co., Limited Partnership, Suite 300, 5801 N. Broadway, Oklahoma City, Oklahoma 73118-7486.

¹ Letter dated January 28, 1987, requesting redesignation of small producer certificate.

² Application was filed in Docket No. CS78-97. Commission records show that D.J. Simmons, Estate, received its small producer certificate in Docket No. CS72-336.

³ Undated letter received February 9, 1987, as supplemented by letter dated February 10, 1987, received February 17, 1987, requesting redesignation of small producer certificate.

⁴ By letter dated February 3, 1987, as supplemented by letter dated February 6, 1987, Applicant requests redesignation of small producer certificate to reflect that Martin Exploration Management Company (a Colorado limited partnership) has succeeded to all of the oil and gas business of Martin Oil Service, Inc. and Martin Exploration Management Corporation, which are no longer in existence. Applicant proposes to continue making sales under the small producer certificate originally issued to Martin Oil Service, Inc. in Docket No. CS75-430, and not utilize the small producer certificate issued to Martin Exploration Management Corporation in Docket No. CS79-534.

[Docket Nos. CP87-196-000, et al.]

Transcontinental Gas Pipe Line Corp., et al.; Natural Gas Certificate Filings

Take notice that the followings filings have been made with the Commission:

¹ This notice does not provide for consolidation for hearing of the several matters covered herein.

1. Transcontinental Gas Pipe Line Corp.

[Docket No. CP87-196-000]

February 27, 1987.

Take notice that on February 6, 1987, Transcontinental Gas Pipe Line Corporation (Applicant), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP87-196-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public

convenience and necessity authorizing the rendition of a new storage service, to be known as SS-1 Storage Service, and the construction and operation of certain facilities necessary to provide such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that under the new storage service it would provide up to 9,000 Mcf of storage capacity and a maximum deliverability of 120,000 dt equivalent of natural gas per day on a firm basis for the following customers who have executed Letters of Intent as contained in Exhibit I of the application, for the following storage quantities:

Customer	Storage demand (dt equivalent per day)	Storage capacity (Mcf)
Atlanta Gas Light Co.	20,918	1,568.9
Public Service Electric and Gas Co.	43,300	3,247.5
Long Island Lighting Co.	17,432	1,307.4
The Brooklyn Union Gas Co.	13,945	1,045.9
South Jersey Gas Co.	17,432	1,307.4
Elizabethtown Gas Co.	6,973	523.0

Applicant notes that the service rendered under Rate Schedule SS-1 would ultimately be on a firm basis. It is indicated that such service would be provided on an interruptible basis prior to the date firm transportation commences under Applicant's transportation agreement with Consolidated Gas Transmission Corporation (CGT) which would be dependent on the construction of the proposed pipeline between CGT's Liedy and Greenlick storage facilities and the installation of the leased compression and related facilities at the Tioga storage facility.

Applicant further states that the SS-1 Storage Service is made possible by a separate storage arrangement with North Penn Gas Company (North Penn) and a transportation arrangement with CGT. Applicant submits that North Penn and CGT currently own and operate a gas storage field and related storage facilities located in Tioga County, Pennsylvania, in which natural gas would be stored for the account of Applicant. Applicant further states that North Penn would provide Applicant with up to 9,000 Mcf of storage capacity and 120,000 dt equivalent of natural gas withdrawal capability pursuant to North Penn's Rate Schedule SS. It is indicated that CGT would construct and operate pipeline facilities to provide the capacity necessary to transport the North Penn storage quantities on behalf of Applicant.

Applicant states that under the arrangements with North Penn and CGT, during the summer injection season Applicant, on behalf of its storager customers, would deliver quantities of gas to CGT at a new interconnection between the facilities of Applicant and CGT at the Leidy Storage Field in Clinton County, Pennsylvania, for transportation to North Penn for storage injection. Applicant states that

North Penn would be obligated to inject into storage on any one day at least one hundred eightieth (1/80) of Applicant's 9,000 Mcf capacity whenever less than one-half (1/2) of Applicant's storage capacity is occupied and at least one-two hundred fourteenth (1/214) of Applicant's storage capacity whenever greater than one-half (1/2) of Applicant's storage capacity is occupied.

Applicant further states that during the winter period, quantities of natural gas would be delivered to CGT by North Penn for redelivery to Applicant at the interconnection between the facilities of Applicant and CGT at the Leidy Storage Field. It is explained that North Penn's obligation to make withdrawals from storage would decrease in relationship to the percentage of Applicant's storage capacity as follows:

Storage balance as a percent of storage capacity:	Maximum daily storage deliverability (Mcf per day)
100-34 percent.....	120,000
33-21 percent.....	80,000
20-0 percent.....	45,000

Applicant also indicates that North Penn would be obligated to deliver from storage no more than 80,000 Mcf of natural gas per day after February 8 of any year and no more than 45,000 Mcf of natural gas per day after February 28 of any year.

Applicant further states that the SS-1 Storage Service customers would tender gas to Applicant for injection into storage at the points of delivery specified in their sales rate schedules with Applicant. Applicant submits that, in addition to purchasing gas under Applicant's sales rate schedules for injection, the customers may purchase such gas from any source and arrange for transportation of such gas to the specified points of delivery in their sales rate schedules with Applicant. Applicant further states that storage withdrawals would be redelivered by Applicant at the points of delivery specified in their service agreement.

Applicant further states that Applicant's agreement with North Penn limits the injections and withdrawals, therefore Applicant's Rate Schedule SS-1 limits a storage service customer's daily entitlement to storage injections or withdrawals as follows:

Storage balance as a percent of storage capacity	Maximum daily storage withdrawal as a percent of customer's storage demand	Maximum daily storage injection as a percent of customer's storage demand
100-34 percent.....	100.0 percent.....	
33-21 percent.....	66.6 percent.....	
20-0 percent.....	37.5 percent.....	
50-0 percent.....		41.6 percent.
100-50 percent.....		35.0 percent.

Applicant also states that a storage service customer is entitled to nominate for withdrawal no more than 66.67 percent of its storage demand after February 8 of any year and no more than 37.50 percent of its storage demand for the period then in effect after February 28 of any year, which would be in accordance with Applicant's service from North Penn.

Applicant states that the indicated initial rates for the SS-1 Storage Service include a monthly demand charge of \$10.75 per dt of contract demand, a monthly capacity charge of \$.026 per dt and injection and withdrawal charges of \$.133 per dt.

Applicant states that the methodology employed in the derivation of the Rate Schedule SS-1 rates for service entails an accumulation and direct assignment of the: (1) Charges for the storage and transportation services rendered to Applicant by North Penn and CGT, and (2) estimates cost of service for the incremental facilities on Applicant's Leidy Line and market area facilities. Applicant also states that rates for storage service under Rate Schedule SS-1 would be subject to adjustments to reflect any changes in the costs and charges of North Penn and CGT in providing service to Applicant.

Applicant further states that if Applicant, North Penn and CGT receive satisfactory regulatory approval to construct the proposed facilities and provide services relating to the proposed SS-1 Storage Service by July 1, 1987, SS-1 Storage Service would commence in 1987 with storage withdrawals commencing November 1, 1987. If regulatory approvals are received after such date, SS-1 Storage Service would commence in 1988.

Applicant states that in order to provide the proposed SS-1 Storage Service, it would be necessary for Applicant to construct, install and operate pipeline loop at four locations on its Leidy Line and market area facilities. Such facilities would consist of a 17-mile loop of 36-inch pipeline between MP 12.51 and MP 29.51 on Applicant's Leidy Line in New Jersey, a 14.28-mile loop of 36-inch pipeline between MP 11.82 and MP 26.10 on Applicant's Leidy Line in Pennsylvania,

a 3.44-mile loop of 24-inch pipeline between MP 4.79 and MP 8.23 on Applicant's Trenton Woodbury Lateral in New Jersey, and 6.30-mile loop of 20-inch pipeline between MP 1.83 and MP 8.13 on Applicant's Marcus Hook lateral Line A in New Jersey. Applicant states that the estimated overall capital cost of such facilities is \$55,998,000 and would be financed through revolving credit arrangements, short-term loans and funds on hand, with permanent financing to be undertaken as part of an overall long-term financing program at a later date.

Applicant further states that North Penn and CGT would file a joint application to construct the necessary facilities and provide long-term storage and transportation service for Applicant, the authorization of which is necessary for Applicant to provide the proposed SS-1 Storage Service. This application was filed on February 10, 1987, in Docket No. CP87-203-000.

Comment date: March 20, 1987, in accordance with Standard Paragraph F at the end of this notice.

2. Washington Gas Light Co.

[Docket No. CP84-706-002]

March 2, 1987.

Take notice that on February 11, 1987, Washington Gas Light Company (WGL), 1100 H Street, NW., Washington, DC 20080, filed in Docket No. CP84-706-002 a petition pursuant to section 7(c) of the Natural Gas Act to extend the order issued April 16, 1986, in Docket No. CP84-706-001, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

The order issued April 16, 1986, permitted WGL to sell compressed natural gas (CNG) to Accokeek Marine Company (Accokeek) for a short-term experimental period terminating December 31, 1986, it is stated. It is further stated that the order exempted WGL from the certificate requirements of section 7(c) of the Natural Gas Act for that time period. WGL indicates that it desires to continue to sell CNG, on an experimental basis, to Accokeek for a period ending December 31, 1988. It is stated that the volume of gas to be sold in this experimental program is *de minimis*, as Accokeek's current cylinder capacity is only approximately 5 Mcf of gas.

Comment date: March 23, 1987, in accordance with Standard Paragraph F at the end of this notice.

3. Black Marlin Pipeline Co.

[Docket No. CP87-198-000]

March 2, 1987.

Take notice that on February 9, 1987, Black Marlin Pipeline Company (Black Marlin), 1200 Travis Street, Houston, Texas 77002, filed in Docket No. CP87-198-000 an application pursuant to section 7(c) of the Natural Gas Act requesting authorization for transportation of natural gas for Humble Gas Transmission Company (Humble) and certain of Humble's affiliates and a temporary certificate to initiate the service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Black Marlin seeks authorization to transport volumes of natural gas owned by Humble which are produced from High Island Block 170, offshore Texas (HI Block 170), and delivered to Black Marlin's pipeline at an existing point of receipt located on or near the Shell Offshore, Inc. (Shell), platform in High Island Block A-6, offshore Texas (HI Block A-6). Black Marlin states that it would receive, transport and deliver pursuant to its Rate Schedule T-1, a daily contract quantity of 6,000 Mcf of Humble's HI Block 170 Gas (subject to adjustment of up to 20 percent within one year of the effective date of the service agreement) and additional volumes of such gas under the effective excess quantity provisions contained in Rate Schedule T-1. It is stated that Humble would deliver or cause the delivery of Humble's HI Block 170 gas to Black Marlin at the HI Block A-6 receipt point through existing production facilities connecting the HI Block 170 reserves and the Shell HI Block A-6 platform, and that Black Marlin would redeliver such gas at an existing point or points of delivery located near the terminus of Black Marlin's system in Texas City, Texas, to Union Carbide Corporation's Texas City, Texas, plant and to Houston Pipe Line Company (HPL) for Humble's or its designee's account. HPL would subsequently transport such volumes of Humble's HI Block 170 gas which it receives under section 311 of the Natural Gas Policy Act of 1978 (NGPA), it is stated.

Black Marlin further states that in order to permit the delivery of volumes of gas on a firm basis for Humble and volumes in excess of all firm shippers' daily contract quantities under its Rate Schedule T-1 as proposed by its application, and in order to place such excess quantity service under its Rate Schedule T-1 on an equal footing with interruptible service provided under its Rate Schedule T-2 and T-3, it is

proposing certain revisions to its FERC Gas Tariff, Original Volume No. 1:

(1) In Rate Schedule T-1, Black Marlin would eliminate the currently effective 125 percent limitation on excess quantity gas;

(2) In Rate Schedules T-2 and T-3, Black Marlin would eliminate the "impairment of deliveries" sections currently contained therein; and

(3) In the General Terms and Conditions, Black Marlin would include, in place of the foregoing provisions in (2) above, a provision providing for the allocation of capacity on a *pro rata* basis for excess quantity service under Rate Schedule T-1 and interruptible service.

Black Marlin proposes to render service to Humble at the currently effective T-1 rate, which is 5.0 cents per day per Mcf of daily contract quantity with an overrun charge during any month of 5.0 cents per Mcf of gas transported. Black Marlin states that the service agreement between it and Humble would specify an initial term of two years commencing on the date of first deliveries, and thereafter remain in force and effect unless terminated by either party. Pursuant to a precedent agreement between the parties, Humble would be entitled to assign all or any part of its rights and obligations under the service agreement to either or both of its affiliates, Exxon Company, U.S.A. (Exxon), and Humble Gas System, Inc., it is stated. Accordingly, Black Marlin requests that the proposed authorization also extend and apply to the receipt, transportation and delivery of volumes of natural gas owned and/or controlled by these Humble affiliates which are produced from HI Block 170, in the event of such assignments.

Black Marlin also requests that the Commission issue a temporary certificate to permit Black Marlin to commence service for Humble on an expedited basis. Black Marlin states that the gas is currently being transported by Black Marlin for Humble pursuant to an NGPA section 311 transportation arrangement commenced prior to October 9, 1985, for a two year term due to expire March 3, 1987. It is stated that Humble has advised Black Marlin that Exxon, the producer of Humble's HI Block 170 gas, relies solely on transportation held by Humble to produce HI Block 170, that approval of the proposed service would be necessary to continue production from HI Block 170 and that Exxon would be subject to losing its lease on this property if production were to cease for over ninety days.

Comment date: March 27, 1987, in accordance with Standard Paragraph F at the end of this notice.

4. Consolidated Gas Transmission Corp.; North Penn Gas Co.

[Docket No. CP87-203-000]

March 2, 1987.

Take notice that on February 10, 1987, Consolidated Gas Transmission Corporation (CGT), 445 West Main Street, Clarksburg, West Virginia 26301, and North Penn Gas Company (North Penn), 76-80 Mill Street, Port Allegany, Pennsylvania 16743, referred to jointly as Applicants, filed in Docket No. CP87-203-000 a joint application pursuant to section 7 of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing further development of the Tioga Storage Pool, storage and transportation services, construction and operation of facilities, and the abandonment of the Palmer Compression Station, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants are seeking authorization for the:

- (1) Implementation of a revised operating plan for Tioga Storage Pool in Tioga County, Pennsylvania;
 - (2) Construction and Operation of a new Tioga Compressor Station and associated facilities;
 - (3) Increase in storage capacity at Tioga Storage Pool to 36,000,000 Mcf;
 - (4) Conversion of four existing observation wells to injection wells, and construction and replacement of certain gathering pipelines in Tioga Storage Pool;
 - (5) Performance by North Penn of storage services for Transcontinental Gas Pipeline Corporation (Transco);
 - (6) Performance by CGT of related transportation services for Transco;
 - (7) Installation and operation of temporary compression facilities and the performance of temporary compression and storage services;
 - (8) Construction and operation of approximately 7.3 miles of 30-inch transmission pipeline and related measuring, regulating and appurtenant facilities in Potter and Clinton Counties, Pennsylvania; and
 - (9) Abandonment by North Penn of its existing Palmer Compressor Station in Tioga County, Pennsylvania.
- Applicants state that they have renegotiated their 1974 operating agreement and under an agreement dated February 2, 1987, CGT would operate all facilities in the Tioga Storage Pool, and would also construct, own, and operate a new compressor station,

to be known as Tioga Compressor Station. It is stated that Tioga Compressor Station would be constructed on a site adjacent to, and currently a part of, North Penn's existing Palmer Compressor Station in Tioga County, Pennsylvania. Applicants state that when completed in 1988, the station would be comprised of two 4,000 horsepower units. Tioga Storage Pool would be operated at an increased wellhead pressure of 1,680 psig consistent with the original rock pressure of the pool, after construction of all facilities, it is stated. Additionally, Applicants indicate that natural gas would be compressed at Tioga Station for injection into North Penn's adjacent Meeker Storage Pool. Applicants also state that the agreement provides that CGT would receive a total of 14,000,000 Mcf of top gas capacity and 173,000 Mcf of last day deliverability and that North Penn would receive a total of 10,000,000 Mcf and last day deliverability of 95,000 Mcf.

Applicants state that prior to the completion of the Tioga compression facilities, CGT would provide any necessary injection and withdrawal services to enable North Penn to commence storage service promptly to Transco. CGT would provide the temporary injection services from its existing compression facilities at the Boom Storage Pool and CGT would provide the temporary withdrawal service by installing and operating two 1,100 horsepower units, which would be leased from an independent compression-leasing concern.

Applicants propose to convert four existing storage observation wells (TW-200, TW-201, TW-203, TW-206) to injection wells, and to connect those wells into the existing Tioga storage pipeline system. Applicants propose to replace two existing storage pipelines with larger 8%-inch diameter pipe. Each line would be approximately 750 feet in length; one line, connecting well TW-504, is currently 6-inch diameter pipe, and the other line (Well TW-401) is 6%-inch diameter pipe, it is stated. Applicants inform that the estimated capital cost of this portion of Applicants' proposal is approximately \$281,000, exclusive of filing fees.

Applicants state that under a storage service agreement dated January 23, 1987, North Penn has agreed to render storage service to Transco under the terms, conditions and rates specified in North Penn's currently effective storage Rate Schedule SS. Specifically, it is proposed that Transco would receive storage service from the Tioga Storage Pool comprising 9,000,000 Mcf of storage

space and up to 120,000 Mcf per day of storage deliverability.

Applicants further state that CGT has agreed to transport natural gas for Transco on a firm, long-term basis, in order for Transco to make and receive deliveries of storage gas to and from North Penn as contemplated in the storage service agreement described above. CGT would transport up to 120,000 dt equivalent of natural gas per day for Transco during the twenty-year term of the transportation agreement dated November 13, 1986, it is stated. Applicants proposed that CGT charge Transco for these firm transportation services a two-part rate, consisting of a fixed monthly demand charge of \$78,900 per month and a commodity charge per dt of natural gas transported equal to 40 percent of CGT's Rate Schedule TI rate (exclusive of fuel), currently 11.6 cents per dt of natural gas. Applicants state that Transco would deliver gas to CGT for transportation to Tioga Storage Pool at an existing point of connection at Leidy Storage Pool, and CGT would deliver such gas to North Penn for Transco's account at Tioga Storage Pool. During the withdrawal season, CGT would receive gas from North Penn at Tioga for Transco's account and redeliver such gas to Transco at a proposed new point of connection to be established between CGT's proposed Line TL-454 and Transco's existing pipeline, in Potter County, Pennsylvania, it is stated. Applicants inform that the proposed new connection, including the necessary measuring, regulating and appurtenant facilities, would be constructed, owned and operated by CGT and that the cost of constructing the facility would be reimbursed to CGT by Transco.

Applicants proposed that CGT construct and operate approximately 7.3 miles of 30-inch transmission pipeline and related measuring, regulating and appurtenant facilities in Potter and Clinton Counties, Pennsylvania, in order to provide the transportation service for Transco and maintain operating flexibility in CGT's pipeline. Applicants inform that the estimated capital cost of the proposed pipeline, to be known as Line No. TL-454, and related and appurtenant facilities is approximately \$6,775,000, exclusive of filing fees.

Applicants state that the construction and operation of the new Tioga Compressor Station and the new plan of operation, would permit North Penn to abandon its existing Palmer Compressor Station. This station consists of 19 units totalling 4,995 horsepower and was authorized pursuant to North Penn's grandfathered certificate issued in

Docket No. G-335 (3 FPC 936), it is stated. Applicants inform that North Penn anticipates operating and maintenance problems at Palmer Station because of the age and condition of the existing facilities. North Penn proposes to maintain Palmer Station until the new Tioga Compressor Station is installed and completely operational, in order to insure that the new facilities and plan of operation are adequate. Applicants state that North Penn would then dismantle the station and physically remove the existing equipment and structures.

Applicants further state that the estimated total capital cost of all proposed facilities is \$22,716,000. The total estimated expense of the temporary compression facilities is \$750,000 and approximately \$40,000 monthly rental expense, to be reimbursed by North Penn. Applicants inform that CGT would finance the cost of these facilities from funds on hand and from funds to be obtained from its parent corporation, Consolidated Natural Gas Company, and that North Penn would finance its share of costs from funds on hand. Applicants state that upon issuance of the necessary certificate authorizations, Applicants expect to commence construction of the proposed facilities promptly. The proposed pipeline is anticipated to be completed during 1987 and the permanent compression facilities are expected to be ready for service by July 31, 1988, it is stated. Applicants expect the temporary compression facilities to be ready for service by November 1, 1987.

Applicants also state that Transco is filing an application under section 7 of the NGA for authorization to render a new storage service, SS-1 Storage Service, to six local distribution company customers, and to construct and operate certain related pipeline facilities. This application was filed on February 6, 1987, in Docket No. CP87-196-000, it is stated.

Comment date: March 20, 1987, in accordance with Standard Paragraph F at the end of this notice.

5. Lone Star Gas Company, a Division of ENSEARCH Corp.

[Docket No. CP87-190-000]

March 3, 1987.

Take notice that on February 2, 1987, Lone Star Gas Company, a Division of ENSEARCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP87-190-000 for a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act authorizing the transportation of natural gas and the

construction and operation of facilities required to implement the transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Lone Star proposes to transport up to 17.6 billion Btu equivalent of natural gas per day on a firm basis for Coastal States Gas Transmission Company (Coastal) pursuant to a gas transportation agreement January 1, 1987. Lone Star states that Coastal would make available volumes of natural gas at the following locations:

(a) At a mutually agreeable proposed point of interconnection between the facilities of Lone Star and Natural Gas Pipeline Company of America (Natural) in Stephens County, Oklahoma,

(b) At an existing metering facility located in Section 3-T2N-R8W, Stephens County, Oklahoma,

(c) At an existing metering facility located in Cotton County, Oklahoma, and

(d) At Lone Star's existing metering stations located at the Anadarko Petroleum Corporation's Panther Plant and the Gulf Energy Antioch Plant, both located in Garvin County, Oklahoma.

Lone Star indicates that it would redeliver the gas for Coastal's account at the point of connection where Lone Star's interstate transmission line A-22 connects to the inlet flange of Lone Star's distribution mains at the Wichita Falls West Interstate Measuring Station, Wichita County, Texas.

Lone Star proposes to charge Coastal 9.77 cents for each million Btu of gas delivered to Coastal, after allowing one and one-half percent reduction for gas lost and unaccounted for, gas used as fuel, and gas used in day-to-day pipeline operations. Lone Star states that as considered for firm transportation service priority, Coastal would pay a monthly demand charge of 9.77 cents multiplied by 9.0 billion Btu multiplied by the number of days in the month that deliveries of gas would or should be made by Coastal. Lone Star also indicates that all quantities tendered by Coastal or its designee at the above receipt points up to the cumulative daily maximum would be credited against the monthly demand charge.

Lone Star proposes to construct and operate the following facilities: (1) A tap and tap valve located at the receipt point with Natural in Stephens County, Oklahoma, (2) a back-pressure regulator and block valve located in Stephens County, Oklahoma and Wichita County, Texas, respectively, and (3) a measuring station consisting of two 8-inch meters located in Wichita County, Texas. Also, Lone Star requests authorization to

operate its Line T-1 and 338 feet of 10-inch crossover located in Stephens County, Oklahoma, which since 1973, Lone Star indicates, has been used only for emergency deliveries. Lone Star states that the estimated \$120,040 cost of facilities would be financed by working capital and that Coastal would reimburse Lone Star for expenses incurred in constructing facilities needed to effectuate the delivery of gas at any receipt point. Lone Star requests pregranted abandonment of the facilities at such time as the need for the facilities expires.

Lone Star also requests pregranted abandonment of the transportation service effective September 30, 1999, the termination date of the transportation agreement.

Comment date: March 27, 1986, in accordance with Standard Paragraph F at the end of this notice.

Trunkline Gas Co.

March 3, 1987.

[Docket No. CP85-206-002]

Take notice that on February 9, 1987, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85-206-002 a petition to amend the Commission's order issued August 21, 1985, in Docket No. CP85-206-000 pursuant to section 7(c) of the Natural Gas Act so as to authorize an additional point of redelivery of natural gas to Southern Natural Gas Company (Southern) on behalf of Bridgeline Gas Distribution Company (Bridgeline), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Trunkline requests Commission approval to provide an additional point of redelivery (pursuant to a July 14, 1986, amendment to the August 28, 1984, transportation agreement between Trunkline and Bridgeline) at an existing interconnection between Trunkline and Southern located near Shadyside in Section 27, Township 15 South, Range 10 East, St. Mary Parish, Louisiana. At this interconnection, Trunkline proposes to redeliver natural gas on behalf of Bridgeline to Southern. Bridgeline asserts that Southern plans to redeliver such gas to Bridgeline pursuant to section 311(a)(1) of the Natural Gas Policy Act and 284.105(a) of the Commission's Regulations.

Comment date: March 24, 1987, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

7. United Gas Pipe Line Co.

[Docket No. CP87-214-000]

March 3, 1987.

Take notice that on February 19, 1987, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-214-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and for permission and approval to abandon certain facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it is engaged in a multi-year project to renovate and modernize the operations of its transmission system.¹ Applicant proposes to abandon by removal 53.9 miles of 18-inch pipeline, 8.8 miles of 16-inch pipeline, 3.9 miles of 14-inch pipeline and 3.9 miles of 12-inch pipeline all on its Baton Rouge-New Orleans pipeline in Ascension, St. Charles, St. James and St. John the Baptist Parishes, Louisiana. Applicant proposes to replace the abandoned pipe with 50.16 miles of 24-inch pipe. Applicant explains that the existing line, which was installed in 1927, is a Dresser coupling connected line with high maintenance costs.

Applicant proposes to complete the replacement in three phases (Phases III, IV and V). Phase III construction would begin in 1988, Phase IV in 1989, and Phase V in 1990, it is stated. Applicant indicates that the estimated cost of the proposed project is \$30,499,100, which would be financed with funds on hand.

Comment date: March 24, 1987, in accordance with Standard Paragraph F at the end of this notice.

8. United Gas Pipe Line Co.

March 3, 1987.

[Docket No. CP87-215-000]

Take notice that on February 20, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-215-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon service and facilities utilized in the sale of natural gas to eight industrial customers, all as more fully set forth in the application

which is on file with the Commission and open to public inspection.

By this application United Specifically requests Commission permission to abandon sales and facilities to the following:

Customer name	Contract expiration date
Acadia Vermilion Irrigation Co	09-04-86
Billeaud Sugar Factory	09-04-86
Columbia Sugar Co	09-04-86
Freeman Veneer Co., Inc.	09-04-86
Halby Division, Argus Chemical Corp	01-01-83
Homer, Louisiana, Town of (Power Plant)	01-01-87
Meeker Sugar Cooperative, Inc.	01-01-87
South Coast Sugars, Inc.	09-01-86

United states that such customers have not accepted deliveries of gas from United in over four years and that service should be abandoned. United further states that facilities serving these customers are not in use and no future use can be foreseen.

Comment date: March 27, 1987, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraph

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the

certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-4883 Filed 3-6-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-238-000, et al.]

Bay Rock Operating Company et al.; Applications for Permanent Abandonment

March 3, 1987.

The Applicants listed herein have filed applications pursuant to section 7 of the Natural Gas Act for authorization to permanently abandon service, as described herein.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Accordingly, person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

¹The first two phases of this project were authorized by Commission orders issued July 25,

1985, in Docket No. CP85-31-000, and September 29, 1986, in Docket No. CP86-233-000.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI87-238-000, B, Jan. 1, 1987.	Bay Rock Operating Co., D-310 Petroleum Center, 900 N.E. Loop 410, San Antonio, TX 78209.	United Gas Pipe Line Co. Rydolph "A" Lease, North McFaddin Field, Victoria County, TX.	¹	
CI87-251-000 (CI63-267), B, Jan. 1, 1987.	Exxon Corp., P.O. Box 2180, Houston, TX 77252-2180.	Valley Gas Transmission, Inc. Ramirena Southwest Field, Live Oak County, TX.	²	

¹ Applicant requests authorization to permanently abandon the sale of gas to United from a lease which Applicant acquired from Texas Oil and Gas Corp. in September 1986.

In support of its application Applicant states that United does not want to purchase any gas from this lease and by letter dated January 12, 1987, United has waived its right of first refusal to negotiate to purchase the gas. Applicant is subject to substantially reduced takes without payment. The lease produces NGPA section 104 gas and there is approximately 150 Mcf/d of casinghead gas available. Applicant has advised that they intend to sell to Delhi Gas Pipeline Corporation in the intrastate market.

² Exxon corporation requests authorization to permanently abandon its sale of gas to Valley Gas Transmission, Inc., covered by Exxon's certificate in Docket No. CI63-267 and its related FERC Gas Rate Schedule No. 312.

In support of its application Exxon indicates that it is subject to substantially reduced takes without payment. The subject gas is NGPA section 104 post-1974 gas and the estimated deliverability is approximately 200 Mcf/d. The gas has been shut-in due to lack of demand. Valley Gas has agreed by letter agreement dated August 20, 1986, to the release of all gas covered under the subject December 22, 1980, contract. Exxon anticipates that the gas will be sold to Natural Gas Pipeline Company of America or one of its affiliates.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 87-4886 Filed 3-6-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-296-000]

Jack L. Burrell et al.; Application for Pregranted Abandonment for an Unlimited Term

March 3, 1987.

Take notice that on February 6, 1987, Jack L. Burrell, et al., (Applicant), 2301 Cedar Springs, Suite 400, Dallas, Texas 75201, filed an application for pregranted abandonment relating to sales for resale in interstate commerce of natural gas from properties located in the Peyton Field Area, Ward County, Texas. Applicant states that sales from such properties were made to El Paso Natural Gas Company (El Paso) and were authorized under a small producer certificate issued in Docket No. CS72-46. Applicant states that it previously filed an application requesting permanent abandonment and three-year pregranted abandonment authorization in Docket No. CI87-86-000 pursuant to § 2.77 of the Commission's rules after El Paso had ceased takes from the subject properties. Applicant states that the subject gas is NGPA section 104 small producer recompletion gas, and that prior to being shut in such gas had a deliverability of 75 Mcf/d. Applicant further states that by order issued January 9, 1987, such application was granted as requested.

Applicant now requests pregranted abandonment authorization for an unlimited term relating to sales of gas from the subject properties. The price to be charged for any subsequent sale of such gas would not exceed maximum lawful prices including any allowances permitted by regulation. Approval of

this pregranted abandonment would allow Applicant to make sales of varying terms in the interstate market, including sales for resales to local distribution companies and interstate pipelines, making this gas equally available to jurisdictional and non-jurisdictional purchasers in response to marketplace needs. Applicant states that this pregranted abandonment is the same in scope as that provided for in the Commission's order No. 451 which prescribed § 157.301(b) of the Commission's Regulations. If Applicant had not been forced to seek expedited abandonment under § 2.77 as a result of El Paso's actions, and had instead invoked the good faith negotiation procedures in Order No. 451 and abandoned sales to El Paso thereby, Applicant states it would have had such pregranted abandonment authority. For the foregoing reasons, Applicant states it is in the public convenience and necessity that Applicant be granted the requested pregranted abandonment authority.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 19, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practices and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb

Secretary.

[FR Doc. 87-4887 Filed 3-6-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI64-1311-000]

Conoco Inc.; Application for Limited-Term Abandonment

March 3, 1987.

Take notice that the Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to abandon service as described herein.

Applicant requests authorization for a three-year limited-term abandonment of its existing service obligation to Valero. Applicant proposes to sell excess volumes not needed by Valero in the intrastate market. Such excess gas was released by Valero by amendatory agreement dated January 1, 1986.

In support of its application Applicant states Valero has been unable to secure a firm market for its gas and therefore cannot provide an estimate of when or if the company will ever acquire a market. Applicant is not receiving any revenue from its interest in the subject wells. Applicant requires abandonment authorization in order to prevent low-cost reserves from being shut-in or curtailed due to lack of demand on Valero's system and to provide Applicant the flexibility to sell excess gas. To the extent Applicant has not required Valero to take a daily or annual volume of gas, lack of demand on Valero's system would result in reduced or no takes of gas without payment. The gas involved is NGPA

section 104 1973-1974 biennium and post-1974 gas and section 106(a) rollover gas with a total deliverability of 5.238 MMcf/day.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the application which

is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the *Federal Register*, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will

be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
C164-1311-000, B, 8/14/86	Conoco Ind., P.O. Box 2197, Houston, TX 77252.	Valero Interstate Transmission Company San Ramon Field, Hidalgo County, TX.	2	

¹ Additional information received November 25, 1986, and January 29, 1987.

² Applicant requests authorization to abandon sale of excess gas to Valero in order to sell such gas in the intrastate market.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 87-4888 Filed 3-6-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. C186-371-001 and C185-392-001]

Producer-Suppliers of Southern Natural Gas Co.; Application To Amend Order Permitting and Approving Limited-Term Blanket Abandonment and Issuing Limited-Term Blanket Certificate With Pregranted Abandonment

March 3, 1987.

Take notice that on February 6, 1987, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202, filed in this proceeding an application requesting the Commission to modify its Order Permitting and Approving Limited-Term Blanket Abandonment and Issuing Limited-Term Blanket Certificate With Pregranted Abandonment issued in this proceeding on September 29, 1986.

Applicant states that it filed an application on April 25, 1986, requesting, *inter alia*, that the Commission grant to producer-suppliers making sales to Applicant for resale in interstate commerce pursuant to section 7(c) of the Natural Gas Act:

(i) Authorization pursuant to section 7(b) of the NGA to abandon sales to Applicant for a term extending up to December 31, 1987.

(ii) Blanket certificates of public convenience and necessity issued pursuant to section 7(c) of the NGA

authorizing the sale for resale in interstate commerce of the natural gas authorized to be abandoned, and

(iii) Pregranted abandonment under section 7(b) of the NGA of any sales for resale made under the requested blanket certificate.

Applicant states that the gas for which it requested the foregoing authorizations was (i) gas subject to a maximum lawful price that is equal to or greater than the maximum lawful price under section 109 of the Natural Gas Policy Act (NGPA) that Applicant and its NGA producer-suppliers mutually agree to release from the applicable gas purchase contract, and (ii) gas subject to a maximum lawful price that is less than the maximum lawful price under section 109 of the NGPA that Applicant and a particular NGA producer-supplier mutually agree to release from the applicable gas purchase contract in conjunction with a release of other higher cost gas in a transaction in which the weighted average cost of the released gas volumes, if they had been purchased by Applicant, would have been equal to or greater than the maximum lawful price under section 109 of the NGPA.

In its application, Applicant requests that the Commission modify the September 29, 1986, order so as to eliminate therefrom the requirement that the gas to which the blanket abandonment and certificate authorizations apply must have a maximum lawful price or a weighted average cost to Applicant equal to or greater than the maximum lawful price

under section 109 of the NGPA.

Applicant requests that the order be modified to provide that the gas to which the blanket abandonment and certificate authorizations apply shall be gas of any NGPA category and vintage that Applicant and its NGA producer-suppliers mutually agree to release from the applicable gas purchase contract.

In support of its application, Applicant states that the imbalance between the supply and demand for Applicant's system gas supplies, as described in Applicant's original application in this proceeding, has continued to worsen as a result of expanded gas-to-gas competition in Applicant's market area. Applicant states that it anticipates that further significant declines in its sales of system gas supplies will occur during the upcoming spring and summer months which, absent release of additional gas supplies subject to the jurisdiction of the Commission under the NGA, may render Applicant unable to take minimum volumes from its producer-suppliers to protect against drainage and potential well or reservoir damage, and to take casinghead gas produced in association with oil. Applicant states that to effectuate such releases, it is necessary that Applicant and its NGA producer-suppliers have greater flexibility regarding the categories of gas eligible to be released for sale to alternate markets.

Applicant submits that a grant of the modification requested in its subject application is required by the public convenience and necessity for the

reasons underlying the Commission's policy on expedited producer abandonments enunciated in Dockets Nos. RM85-1-000, and is consistent with the Commission's recent orders in *Transcontinental Gas Pipe Line Corporation and Transco Gas Supply Company*, Docket Nos. CI86-278-000 and CI86-296-000, 36 FERC ¶ 61,403 (1986) and *ANR Pipeline Company, et al.*, Docket No. CI86-637-000, *et al.*, 38 FERC 61,046 (1987), wherein the Commission granted similar blanket abandonment and certificate authorizations for all NGPA categories of gas. Applicant requests that its application be considered on an expedited basis consistent with the Commission's policy on expedited producer abandonments adopted in Docket No. RM85-1-000.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **FEDERAL REGISTER**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-4889 Filed 3-6-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders, Week of February 2 Through February 6, 1987

During the week of February 2 through February 6, 1987, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of

Hearings and Appeals of the Department of Energy. The following summary also contains a list of the submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Barbara Sue Dalton, 2/5/87; KFA-0068

On January 5, 1987, Barbara Sue Dalton filed an appeal from a partial denial of her Privacy Act Request which was issued to her by the Privacy Act Office of the Oak Ridge Operations Office. That determination denied the Appellant access to documents which were prepared in reasonable anticipation of a civil action or proceeding pursuant to 5 U.S.C. § 552a(d)(5). In considering her Appeal, the DOE rejected the Appellant's contention that because an administrative hearing had been held in the subject proceeding, subsection (d)(5) no longer applied to the withheld documents. Accordingly, the Decision and Order denied Ms. Dalton's Appeal.

Supplemental Order

Energy Refunds, Inc., 2/3/87; KFX-0028

The DOE issued a Supplemental Order to *Energy Refunds, Inc.* (ERI) regarding the DOE's December 4, 1986 determination that ERI had submitted inaccurate information in refund applications filed on behalf of *Ozona Butane Company* (*Ozona Butane*) in the *Ozona Gas Processing Plant* refund proceedings. *Ozona Gas Processing/Ozona Butane Company*, 15 DOE ¶ 85,161 (1986) (*Ozona Butane*). Specifically, the Supplemental Order considered whether to impose sanctions on ERI for the submission of false or misleading information, including suspension of ERI's privilege of participating in proceedings before the Office of Hearings and Appeals, pursuant to 10 C.F.R. § 205.3(b). After reviewing ERI's comments in response to the *Ozona Butane* Decision and other evidence in the proceeding, the OHA concluded that ERI should retain their privilege of participating in proceeding before the OHA because ERI had made at least some effort to insure that the information it submitted was accurate and because the erroneous information had been supplied to ERI by *Ozona Butane*.

Refund Applications

Aminoil U.S.A., Inc./Domex, Inc., et al. 2/3/87; RF139-7, *et al.*

The DOE issued a Decision and Order concerning four Applications for Refund filed by retailers for a portion of the funds remitted to the Department of Energy through a consent order entered into with *Aminoil U.S.A., Inc.* The DOE reviewed each firm's cost bank data and, using a three-step competitive disadvantage analysis, determined a range of each applicant's injury. Based on this analysis, each applicant was granted its requested share of allocable funds. The total amount of refunds granted was \$391,613, representing \$234,029 in principal and \$157,584 in accrued interest.

C.K. Smith & Company, Inc./N. Bernstein & Sons, 2/3/87; RF284-2

The DOE issued a Decision and Order concerning an Application for Refund filed by *N. Bernstein & Sons* from a consent order

fund made available by *C.K. Smith & Company, Inc.* The DOE found that *Bernstein* was an end user of No. 2 heating oil purchased from *Smith* during the consent order period. *Bernstein* was therefore not required to submit detailed proof of injury beyond evidence of its purchases from *Smith*. Accordingly, *Bernstein* was granted a refund representing its full volumetric share, \$4801, plus \$3985 in accrued interest.

C.K. Smith & Company, Inc./Ray Marchand Oil Company, Inc., 2/3/87; RF284-1

The DOE issued a Decision and Order concerning an Application for Refund filed by *Ray Marchand Oil Company, Inc.* from a consent order fund made available by *C.K. Smith & Company, Inc.* The DOE found that *Marchand* was a reseller of No. 2 heating oil purchased from *Smith* during the consent order period. Since the amount of the refund for which *Marchand* applied was less than the \$5,000 small claims threshold set forth in the *Smith* special refund proceeding, the claimant was not required to submit a detailed proof of injury. Accordingly, *Marchand* was granted a refund in the amount of its full volumetric share, \$2208, plus \$1833 in accrued interest.

Conoco Inc./Dixon Brothers, Inc., 2/3/87; RF220-474

The Office of Hearings and Appeals issued a supplemental order concerning a December 15, 1986 Decision and Order, *Conoco Inc./Lakeland Petroleum Co., et al.*, 15 DOE ¶ 85,186 (1986). The OHA determined that the December 15 Decision be modified because it had understood the total amount of the firm's *Conoco* purchases. Accordingly, the OHA granted *Dixon Brothers* an additional refund of \$280.

Consumers Oil Co./Aromalene Oil Co., 2/3/87; RF233-2

The DOE issued a Decision and Order concerning an Application for Refund filed by *Aromalene Oil Co.* The applicant had indirectly purchased No. 2 fuel oil from *Consumers* through *Powerline Oil Co.* and sought a portion of the settlement fund obtained by the DOE through a consent order with *Consumers*. According to the refund procedures established in *Consumers Oil Co.*, 13 DOE ¶ 85,226 (1985), a firm is eligible to apply for a refund if it indirectly purchased *Consumer's* No. 2 fuel Oil through *Powerline*, and the alleged *Consumers'* overcharges were passed through by *Powerline*. The applicant in this case was eligible to apply for a refund greater than \$5,000, but elected to limit its claim to the \$5,000 small claims threshold established in *Consumers*. After examining the evidence and supporting information submitted by the firm, the DOE concluded that the firm should receive a refund. The amount of refund granted was \$8,147, representing \$5,000 in principal and \$3,147 in accrued interest.

Ferrell Companies, Inc./Farmers Union Central Exchange, Odessa L.P.G. Transport Inc., 2/6/87; RF273-1, RF273-2

The DOE issued a Decision and Order concerning two Applications for Refund filed by purchasers of *Ferrell Companies, Inc.* propane. Each applicant filed for a refund

based upon the small claims procedures outlined in *Ferrell Companies, Inc.*, 14 DOE ¶ 85,514 (1986). After examining the applications, the DOE concluded that each applicant should receive a refund based on the volumetric refund amount established in *Ferrell*. The total amount of refunds granted was \$1,609.

Gulf Oil Corporation/A.C. Wagley, Inc., 2/5/87; RF40-3621

The DOE issued a Decision and Order concerning an Application for Refund filed by a consignee, A.C. Wagley, Inc. (Wagley), in connection with the Gulf Oil Corporation refund proceeding. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), Wagley demonstrated that it had lost potential sales of motor gasoline and therefore had been injured as a result of Gulf's alleged pricing practices. Wagley did not demonstrate, however, injury with respect to consigned middle distillates. Accordingly, a refund of \$815 in principal and \$187 in interest was approved only for consigned motor gasoline purchases.

Gulf Oil Corporation/Burk's Gulf Centers, 2/6/87; RF40-2115

The DOE issued a Decision and Order concerning an Application for Refund filed by Burk's Gulf Centers in the Gulf Oil Corporation refund proceeding. Burk's received motor gasoline on consignment from Gulf during the consent order period. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), Burk's demonstrated that it had lost potential sales and therefore had been injured by Gulf's allegedly uncompetitive prices. Accordingly, Burk's will receive a refund of \$1,583 in principal and \$363 in interest based on the percentage market share decline it suffered.

Gulf Oil Corporation/Commercial Parking & Storage, 2/4/87; RF40-3600

The DOE issued a Decision and Order concerning an Application for Refund filed by Commercial Parking & Storage (CPS), a retailer of Gulf motor gasoline and diesel fuel during the consent order period. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), CPS demonstrated that it purchased 766,675 gallons of product from Gulf, for which it will receive principal of \$0.00122 per gallon (the Gulf volumetric refund amount), plus \$0.00028 per gallon in accrued interest. The total amount of the refund approved in this Decision is \$935 in principal and \$215 in interest.

Gulf Oil Corporation/L.R. Haase Oil Company, Eastern Fuels, Inc., Moore's Fuel Service, 2/5/87; RF40-3604, RF40-3606, RF40-3607

The DOE issued a Decision and Order concerning the Applications for Refund filed by L.R. Haase Oil Company, Eastern Fuels, Inc., and Moore's Fuel Service, each of which was a retailer of Gulf refined petroleum products during the Gulf consent order period. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), each firm demonstrated that it purchased a certain volume of product from Gulf, for which it will receive principal of \$0.00122 per gallon (the Gulf volumetric refund amount), plus \$0.00028 per gallon in accrued interest. The total

amount of the refunds approved in this Decision is \$16,907 in principal and \$3,880 in interest.

Gulf Oil Corporation/Mangum Oil & Gas Co. Inc., 2/5/87; RF40-917

The DOE issued a Decision and Order concerning an Application for Refund filed by Mangum Oil & Gas Co. Inc. (Mangum), a reseller of Gulf motor gasoline and middle distillates during the Gulf consent order period. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), Mangum demonstrated that it purchased 23,004,324 gallons of product from Gulf, for which it will receive principal of \$0.00122 per gallon (the Gulf volumetric refund amount), plus \$0.00028 per gallon in accrued interest. The total amount of the refund approved in this Decision is \$28,065 in principal and \$5,681 in interest.

Gulf Oil Corporation/Mattox Distributing Company Inc., 2/2/87; RF40-2787

The DOE issued a Decision and Order concerning the Application for Refund filed by Mattox Distributing Company Inc., a purchaser and consignee of Gulf product during the Gulf consent order period. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), Mattox demonstrated that it purchased 1,056,554 gallons of middle distillates directly from Gulf, for which it will receive principal of \$0.00122 per gallon (the Gulf volumetric refund amount), plus \$0.00028 per gallon in accrued interest. Mattox also demonstrated, using a method approved in *Gulf Oil Corp./C.F. Canter Oil Co.*, 13 DOE ¶ 85,388 (1986), that it had lost potential sales and therefore had been injured in its role as a consignee of motor gasoline. The total amount of refunds approved in this Decision is \$5,357 in principal and \$1,229 in interest.

Gulf Oil Corporation/Olympian Oil Company, 2/5/87; RF40-930

The DOE issued a Decision and Order concerning Application for Refund filed by Olympian Oil Company (Olympian), a reseller of Gulf product during the Gulf consent order period. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), Olympian documented purchases of 43,512,710 gallons of motor gasoline. However, the firm neither documented any of its middle distillate purchases nor demonstrated that under the price controls in effect at the time, it would not have been required to pass through to customers a cost reduction equal to the refund amount claimed for either motor gasoline or middle distillate purchases. Accordingly, Olympian's Application was denied.

Gulf Oil Corporation/W.E. Ingram, et al., 2/5/87; RF40-949 et al.

The DOE issued a Decision and Order concerning the Applications for Refund filed by W.E. Ingram and seven other purchaser/consignees in connection with the Gulf Oil Corporation refund proceeding. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), each firm demonstrated that it purchased a certain volume of product from Gulf, for which it will receive principal of \$0.00122 per gallon (the Gulf volumetric

refund amount), plus \$0.00028 per gallon in accrued interest. None of the firms, however, demonstrated injury with respect to product it received on consignment from Gulf. Accordingly, refunds totaling \$20,996 in principal and \$4,819 in interest were approved only for purchased volumes.

Gulf Industries, Inc./Fred Wambough, et al., 2/4/87; RF259-2 et al.

The DOE issued a Decision and Order granting 11 Applications for Refund from the Gulf Industries, Inc. escrow account under the provisions outlined in *Gulf Industries, Inc.*, 14 DOE ¶ 85,381 (1986). Each applicant was listed in the Appendix to that Decision as being eligible for a refund amount from the Gulf consent order fund based upon the volume of petroleum products purchased from Gulf during the consent order period. Since each applicant was either a reseller whose claim was for \$5,000 or less or an end-user, no further proof of injury was required. The refunds approved in the Decision totaled \$47,462.

Gulf Industries, Inc./McCall Oil and Chemical Corporation, et al., 2/4/87; RF258-9 et al.

The DOE issued a Decision and Order granting three Applications for Refund from the Gulf Industries, Inc. escrow account under the provisions outlined in *Gulf Industries, Inc.*, 14 DOE ¶ 85,381 (1986). Each applicant was listed in the Appendix to that Decision as being eligible for a specified refund amount from the Gulf consent order fund. Since each applicant was either a reseller whose claim was for \$5,000 or less or an end-user, no further proof of injury was required. The refund approved in the Decision totaled \$11,725.16.

Gulf Industries, Inc./Richard G. Shane, John Kline Estey, 2/3/87; RF260-10, RF260-16

The DOE issued a Decision and Order granting two Applications for Refund from the Gulf Industries, Inc. escrow account under the provisions outlined in *Gulf Industries, Inc.*, 14 DOE ¶ 85,381 (1986). Each applicant was listed in the Appendix to that Decision as being eligible for a specified refund amount from the Gulf consent order fund. Since each applicant was a reseller whose claim was for \$5,000 or less no further proof of injury was required. The refund approved in the Decision totaled \$9,959.26.

Lakes Gas Company, Inc./Darrell Thurnbeck, 2/5/87; RF283-1

The DOE issued a Decision and Order concerning an Application for Refund filed by a purchaser of Lakes Gas Company, Inc. propane. A DOE audit of Lakes had identified the applicant, Mr. Darrell Thurnbeck, as having been overcharged for purchases of Lakes propane. Mr. Thurnbeck filed for a refund based upon the procedures outlined in *Lakes Gas Co., Inc.*, 14 DOE ¶ 85,514 (1986). After examining Mr. Thurnbeck's Application, the DOE concluded that a total refund of \$218 was warranted.

Marathon Petroleum Company/Emro Propane Company, 2/3/87; RF250-1486, RF250-1487, RF250-1488

The DOE issued a Decision and Order concerning Applications for Refund filed by EMRO Propane Company, a purchaser of products covered by a consent order that the agency entered into with Marathon Petroleum Company. The applications were denied because EMRO Propane Company was a wholly owned subsidiary of Marathon Petroleum Company during the consent order period.

Marathon Petroleum Company/Koch Marketing Company, 2/5/87; RF250-1604

The DOE issued a Decision and Order concerning an Application for Refund filed by Koch Marketing Company (Koch), a reseller of Marathon covered products. Although the firm's purchase of motor gasoline from Marathon during the consent order period exceeded the threshold refund level established in *Marathon Petroleum Co., Koch* elected to file its refund application in accordance with procedures for filing claims based upon the 35 percent presumption of injury outlined in the Marathon decision. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Koch should receive a refund of \$24,910.68 in principal and \$1,500.25 in accrued interest for a total refund of \$26,410.93.

Mobil Oil Corporation/Admiral Mobil, et al., 2/4/87; RF225-10135 et al.

The DOE issued a Decision granting 47 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling \$24,722, representing \$20,405 in principal plus \$4,317 in interest.

Mobil Oil Corporation/Alexander P. Weekes, et al., 2/4/87; RF225-6516 et al.

The DOE issued a Decision granting 49 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling \$34,149, representing \$28,192 in principal plus \$5,957 in interest.

Mobil Oil Corporation/American Safety Razor Company, et al., 2/4/87; RF225-6223 et al.

The DOE granted 37 Applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to their full allocable shares based on the volumetric methodology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was \$3,326, representing \$2,744 in principal and \$582 in interest.

Mobil Oil Corporation/Astoria 64 Service Station, et al., 2/4/87; RF225-4216 et al.

The DOE issued a Decision granting refunds from the Mobil Oil Corporation

escrow account to 58 retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling \$27,047.

Quaker State Oil Refining Corporation/Consolidated Rail Corporation, Penn Central Transportation Company, 2/6/87; RF213-218, RF213-217

The DOE issued a Decision and Order granting two Applications for Refund filed by end-users of Quaker State Oil Refining Corp. refined petroleum products. Each applicant presented evidence that it purchased refined petroleum products from Quaker State during the consent order period. According to the methodology set forth in *Quaker State Oil Refining Corp.*, 13 DOE ¶ 85,211 (1985), each applicant was found to be eligible for a refund from the Quaker State consent order fund based on the volume of its purchases times the volumetric refund amount. The refunds approved totaled \$9,642.

DISMISSALS

The following submissions were dismissed.

Company name	Case No.
A.J. Mettler Hauling & Rigging Inc.	RF270-2271
A&M Carriage of Tinley Park	RF270-2219
A&P Truck Line, Inc.	RF270-2218
Affiliated of Florida, Inc.	RF270-1801
Americana Expressways	RF270-2227
Annie Mae Matthews	RF40-600
Arrow Screw Products	RF225-6454
Big Mac Trucking Company	RF270-1690
Bilkays Express Company	RF270-1770
Black and White Cars, Inc.	RF270-1159
Blu-Gas Services, Inc.	RF40-3268
Braddy's Auto Servicenter	RF40-3253
Bulkmatic Transport Company	RF270-2259
Burnham Service Corporation	RF270-2249
Carl Strange	RF40-577
Carretta Trucking, Inc.	RF270-1179
Cassens Transport Company	RF270-1040
Centreville Oil Company	RF40-2939
Chromalloy American Corporation	RF271-207
City of Arkansas City	RF225-2079
Clarks Summit Taxi, Inc.	RF270-1354
Cloney Farms Trucking	RF270-2410
Commerical Warehouse Company	RF270-916
Craig Transportation Company	RF270-2258
Crystal Farms, Inc.	RF270-1820
Cyrus Truck Lines, Inc.	RF270-2194
Defense Logistics Agency	RF225-4143
Dumford Trucking Company	RF270-2257
Earl H. Gay Gulf	RF40-2238
East Side Service Station	RF40-2972
Edmondson Gulf Station	RF40-2259
Farm House Foods Corporation	RF270-2383
Flow Control Division Rockwell International	RF225-2618
Foster Westend Gulf	RF40-2969
Gardner Trucking Co., Inc.	RF270-2239
Glo Distributing Co., Inc.	RF270-439, RF270-695
Greenwich Taxi, Inc.	RF270-2128
H&W Trucking Co., Inc.	RF270-2240
H.L. Stansell, Inc.	RF270-2255
Hall's Motor Transit Company	RF270-1235
Hastetter's Service Station	RF40-3527
Herrera Coaches, Inc.	RF270-254
Hohenwald Trucking Lines, Inc.	RF270-2435
Holiday Gulf	RF40-2962
Hopkins's Gulf	RF40-3333
Howard Sheppard, Inc.	RF270-1496
Howard's Express, Inc.	RF270-2432
Inco Express, Inc.	RF270-2275
Indiana Bell Telephone Company	RF250-469
Jersey Coast Freight Lines	RF270-1763, RF270-2237

Company name	Case No.
Joseph A. Ament	RF258-13, RF260-18
Kemp's Gulf Service	RF40-2528
Kirk National Lease Company	RF270-2216
Koch Service Company	RF270-2217
Kodiak Oilfield Haulers, Inc.	RF270-2418
L.B. Griffith	RF225-7056, RF225-7057
Langdon Transportation	RF270-2222
Lynden Inc.	RF270-1273
Marcy's Ledesma Gulf	RF40-3477
Medlock Service Station	RF40-3444
Murphy Motor Freight Lines, Inc.	RF270-2266
National Transport Services, Inc.	RF270-2220
Nicklow's Gulf Service	RF40-2231
Norseman Trucking, Inc.	RF270-2429
NTC of America, Inc.	RF270-1249
OK Grocery Company	RF270-2420
Oscar Meyer Food	RF270-2221
Penzel Construction Co., Inc.	RF225-2693
Perkins Furniture, Inc.	RF270-2233
Peter's Servicecenter	RF40-2228
Port Norris Express Company	RF270-2232
R.C. Williams, Inc.	RF270-2234
Ralph's Station	RF40-2225
Rapid Distribution Service, Inc.	RF270-1889
RCA	RF270-2408
Regal Transportation	RF270-2280
Right-O-Way, Inc.	RF270-2235
Robert's Gulf	RF40-2936
Robison's Gulf	RF40-2208
Robison's Gulf Service	RF40-2238
Russell's Gulf Service #1	RF40-2251
Sears, Roebuck and Company	RF270-2169
Sicomac Carriers, Inc.	RF270-2278
Silvey Refrigerated Carriers, Inc.	RF270-2277
Southwest Trailers, Inc.	RF270-2061
Stauffer-Wacker Silicones Corporation	RF225-8968
Superline Transportation Co., Inc.	RF270-2210
Tankley Transfer	RF270-2208
Taylor & Anderson Towing and Lighterage Company	RF225-5512
Tennessee Truck Lines, Inc.	RF270-2207
Texas Mexican Railway Company	RF271-166
Toledo Frigid Lines, Inc.	RF270-2243
Tom McGann	RF225-6927, RF225-6928
Triboro Coach Corporation	RF270-1625
Usher Transport, Inc.	RF270-1786
Van Brunt & Son, Inc.	RF270-2191
Virginia Foods of Bluefield, Inc.	RF270-2363
W.R. Grace & Company	RF225-6301
W-H Transportation Co., Inc.	RF270-2231
White Bros. Trucking Company	RF270-965
Whitfield Tank Lines, Inc.	RF270-2247
Wiljet Transportation, Inc.	RF270-2427
Williams Refrigerated Express	RF270-2428
Willingham and Reid Gulf	RF40-2243
World Aerospace Corporation	RF225-2645

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,
Director, Office of Hearings and Appeals.
March 2, 1987.

[FR Doc. 87-4922 Filed 3-6-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3161-9]

Notice of Intent To Prepare a Draft Environmental Impact Statement for North Outfall Sewer Replacement Facility; Los Angeles, CA**AGENCY:** Environmental Protection Agency, Region IX.**ACTION:** Notice of Intent to prepare a Draft Environmental Impact Statement (EIS) for the North Outfall Sewer, Replacement Facility, Los Angeles, California.**PURPOSE:** To fulfill the requirements of Section 102(2)(c) of the National Environmental Policy Act, EPA has identified a need to prepare an EIS and therefore issues this Notice of Intent pursuant to 40 CFR 1501.7**FOR FURTHER INFORMATION CONTACT:** Paul Helliher, California Branch, Water Management Division, U.S. Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105, Telephone (415)-974-8283.**SUMMARY:**

Description of the Proposed Action: The proposed action would be the approval of a facilities plan and the issuance of grant monies pursuant to section 201 of the Clean Water Act for the design and construction of a replacement facility for the North Outfall Sewer in the City of Los Angeles.

2. Public and Private Participation in the EIS Process: Full participation by interested Federal, State, and local agencies as well as other interested private organizations and parties is invited. The public will be encouraged to participate in the planning process.

3. Scoping: The existing North Outfall Sewer (NOS) was constructed in the 1920's. This facility, which is semi-elliptical in cross section and traverses a distance of approximately 10 miles from its origin in the vicinity of the intersection of La Cienega Boulevard and Rodeo Road to its destination at the Hyperion Treatment Plant, is now deteriorating. It has fallen tile lining, spalling of the concrete shell, and significant interior debris deposits. The NOS is often surcharged and occasionally overflows into the Ballona Creek. It currently has no diversion capability.

In recognition of the potential water quality and other environmental hazards associated with the present state of the NOS, the California Regional Water Quality Control Board, Los Angeles Region, on January 27, 1986, issued

Cease and Desist Order No. 86-2, which states in part.

"... the City of LA shall ... eliminate dry weather overflows of sewage [from the Jefferson Boulevard Maintenance Yard Overflow Structures] ... by completing short and long term corrective actions [that include the construction of the] North Outfall Replacement Sewer (NORS)."

The proposed project includes an examination of the design and construction of a NORS and other alternatives to satisfy the intent of the Cease and Desist Order. The alternatives to be evaluated include several alternative alignments for a NORS, cleaning and rehabilitation of the existing NOS, and construction of a water reclamation plant.

4. Timing: EPA estimates the draft EIS will be available for public review and comment around September, 1987.

5. Requests for Copies of the Draft EIS: All interested parties are encouraged to submit their name and address to the person indicated above for inclusion on the distribution list for the draft EIS and related public notices.

Dated: February 24, 1987.

Richard E. Sanderson,
Director, Office of Federal Activities.
[FR Doc. 87-4794 Filed 3-6-87; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-59240; FRL-3165-8]

Fatty Acid Esters of Alkoxylated Aromatic Polyol**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for exemption, provides a summary, and requests comments on the appropriateness of granting each exemption.

DATE: Written comments by: March 24, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-59240]" and the specific TME

number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the TME application received by EPA. The complete non-confidential application is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 87-11.

Close of Review Period. February 3, 1987.

Manufacturer: Lonza Inc.
Chemical. (G) Fatty acid esters of alkoxylated aromatic polyol.

Use/Production. (G) Lubricant additive. Prod. range: Confidential.
Dated: March 3, 1987.

Denise Devoe,
Acting Division Director, Information Management Division.
[FR Doc. 87-4860 Filed 3-6-87; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION**Applications for Consolidated Hearing; Loew Broadcasting Corp. et al.**

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and City/State	File No.	MM Docket No.
A. Robert M. Loew, Loew Broadcasting Corp., Waipahu, HI.	BPH-840928ID	87-27
B. Chun Broadcasting, Ltd., Waipahu, HI.	BPH-850522MD	
C. Paula Baptist d/b/a Waipahu Broadcasting Limited Partnership, Waipahu, HI.	BPH-850531MX	
D. Christine E. Paul, Waipahu, HI.	BPH-850531NF	
E. Denny Workman and Chris Cacho d/b/a Waipahu Communications General Partnership, Waipahu, HI.	BPH-850531NG	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a

consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 1937, May 29, 1986. The letter shown before each applicant's name above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
1. Financial	E
2. Environmental impact	A,B,C,D,E
3. Comparative	A,B,C,D,E
4. Ultimate	A,B,C,D,E

(3) If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division,
Mass Media Bureau.

[FR Doc. 87-4845 filed 3-6-87; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Spann Communications et al.

1. The Commission has before it the following mutually exclusive applications for a new AM station:

Applicant and City/State	File No.	MM Docket No.
A. Spann Communications, Smithville, MO.	DP-851202AE	87-16
B. Michael Glinter, Gladstone, MO.	BP-851202AG	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 1937, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading	Applicant(s)
1. Contingent-Comparative	All applicants.
2. Character	A (See Appendix).
3. 307(b)	All applicants.
4. Ultimate	All applicants.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC. 20037. (Telephone (202) 857-3800).

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

Appendix

1. To determine whether Pervis Spann, as a principal of Midway Broadcasting Company, misrepresented in an application for a new broadcast station at Maywood-Chicago, Illinois, the identity of its consulting engineer, and, in light of the evidence adduced, whether Spann Communications possesses the basic qualifications to be a Commission licensee.

2. To determine whether Pervis Spann paid Daryl Williams to sign a false affidavit which minority Broadcasting of the Midwest, Inc. filed with the Commission in a proceeding involving mutually exclusive proposals for a Memphis, Tennessee, broadcast station and, in light of the evidence adduced, whether Spann Communications possesses the basic qualifications to be a Commission licensee.

[FR Doc. 87-4846 Filed 3-6-87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Security Pacific Corp.; Proposal To Underwrite and Deal in Certain Securities to a Limited Extent

Security Pacific Corporation ("Applicant"), New York, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage through Security Pacific Securities, Inc. ("Company"), Los Angeles, California, or through one or more wholly-owned subsidiaries of Company, in the

activities of underwriting and dealing in, to a limited extent, the following securities which are eligible for purchase by banks for their own account but not eligible for banks to underwrite and deal in (hereinafter "ineligible securities"):

(1) Municipal revenue obligations (including certain industrial development bonds);

(2) Mortgage-related securities (obligations secured by, or representing interests in, residential real estate mortgages);

(3) Consumer-receivable-related securities (obligations secured by, or representing an interest in, loans or receivables of a type generally made to or due from consumers) (hereinafter "CRRs").

(4) Commercial paper;

Applicant has applied for approval under § 225.25(b)(16) of Regulation Y (12 CFR 225.25(b)(16)) to engage, *de novo* through Company in underwriting and dealing in securities and money market instruments that banks are expressly authorized to underwrite and deal in under section 16 of the Glass-Steagall Act (12 U.S.C. 24 Seventh), including U.S. government obligations and general obligations of states and their political subdivisions. The foregoing activities are presently conducted by Applicant's principal banking subsidiary, Security Pacific National Bank and would ultimately be transferred to Company.

Upon approval the proposal, Company would commence underwriting and dealing in ineligible securities subject to the limitations set forth in the application. The activities would be performed through Company's offices in Los Angeles, serving customers throughout the United States. Company may establish offices in other locations as it deems necessary and appropriate.

Section 4(c)(8) of the Bank Holding Company Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board has not previously approved the proposed underwriting and dealing activities for bank holding companies. On December 24, 1986, the Board approved an application under section 4(c)(8) by Bankers Trust New York Corporation to engage in the limited placement of third-party commercial paper with purchasers, even if that activity were deemed to constitute underwriting,

subject to conditions. 73 Federal Reserve Bulletin 138 (1987).

Applicant states that the proposed activities are so closely related to banking or managing or controlling banks as to be a proper incident thereto on the basis of its belief that banks engage in activities that it believes are functionally and operationally similar to those involved in the application, including underwriting and dealing in eligible municipal and mortgage-related securities as well as money market instruments; making secured and unsecured consumer loans; making short-term loans and discounting commercial paper; making, buying and selling loans; and in assisting clients in placing commercial paper.

In determining whether a particular activity is a proper incident to banking, the Board considers whether the performance of the activity by an affiliate of a holding company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest or unsound banking practices. Applicant maintains that permitting bank holding companies to engage in the proposed activities would enable holding companies to provide increased services to customers; would be procompetitive; and would strengthen the safety and soundness of bank holding companies by enabling them to improve their liquidity, competitive position and income potential. In addition, Applicant believes the proposal would not result in adverse effects.

The application also presents issues under section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as Security Pacific National Bank, with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. Applicant states that it would not be "engaged principally" in such activities on the basis of restrictions that would limit the amount of the proposed activity relative to the total business conducted by Company and relative to the total market in such activity.

During any two year period, the Company's underwriting and dealing in ineligible securities ("ineligible activities") will account for no more than 15 percent of its total activities, measured by compliance with two of the three indicia set forth below:

(1) The dollar volume of underwriting commitments (or underwriting or

primary sales if larger) and dealer sales attributable to ineligible activities, compared with total dollar volume of all of Company's activities;

(2) The average assets acquired in connection with ineligible activities, compared with the average assets acquired in connection with all of Company's activities; and

(3) The gross income (i.e., income before expenses and taxes) from ineligible activities, compared with the gross income from all of Company's activities.

In addition, Applicant will limit Company's involvement in the market for ineligible activities through the following restrictions:

(1) The volume of all municipal revenue securities underwritten by Company in any one calendar year shall not exceed 3 percent of the total amount of such securities underwritten domestically by all firms during the previous calendar year.

(2) The aggregate volume of all mortgage-related securities and CRRs underwritten by Company in any one calendar year shall not exceed 3 percent of the total aggregate amount of such securities underwritten domestically by all firms during the previous calendar year.

(3) The amount of all municipal revenue securities held by Company for dealing at any one time shall not exceed 3 percent of the total amount of such securities underwritten domestically by all firms during the previous calendar year.

(4) The aggregate amount of all mortgage-related securities and CRRs held by Company for dealing at any one time shall not exceed 3 percent of the total aggregate amount of such securities underwritten domestically by all firms during the previous calendar year.

(5) The total amount of commercial paper outstanding on any day underwritten by Company shall not exceed 10 percent of the average daily amount of dealer-placed commercial paper outstanding during the prior four calendar quarters (Applicant would reduce this limit from 10 percent to 5 percent if the Board determines that such a reduction in market share is legally required).

(6) The total amount of commercial paper held in inventory by Company on any day shall not exceed 10 percent of the average daily amount of dealer-placed commercial paper outstanding during the prior four calendar quarters. (Applicant would reduce this limit from 10 percent to 5 percent if the Board determines that such a reduction in market share is legally required).

In addition, Applicant has stated that it would be prepared to conduct all of the proposed activities in a single corporation should the Board decide that the activities of Company and one or more of its subsidiaries may not be viewed on a consolidated basis for section 20 purposes.

In publishing Security Pacific's proposal for comment, the Board does not take any position on the consistency or inconsistency of the proposal with the Glass-Steagall Act or the Bank Holding Company Act. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal is consistent or inconsistent with the Glass-Steagall Act or that the proposal meets or is likely to meet the standards of the Bank Holding Company Act. The Board previously published for comment applications by other bank holding companies to underwrite and deal in the proposed ineligible securities, e.g., Citicorp (50 FR 20847), J.P. Morgan & Co. Incorporated (50 FR 41025), Bankers Trust New York Corporation (51 FR 16590), and Chemical New York Corporation (51 FR 42300). The Board held a hearing on certain issues presented by the applications of Citicorp, J.P. Morgan and Bankers Trust on February 3, 1987.

Comments are requested on the scope of activity permitted by the phrase "engaged principally" under the Glass-Steagall Act, including whether the phrase contemplates the type of limitations involved in this application, which are based on Applicant's market share and on a percentage of the affiliate's total business activities. The Board also seeks comment on whether the term "engaged principally" in section 20 would preclude a member bank affiliate from engaging in activities restricted by this section on a substantial and regular or non-incident basis and without regard to the amount of other activities conducted by the affiliate.

Comments are also requested on whether the proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto," and whether the proposal as a whole can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." In this

regard, comments are requested on whether conditions similar to those adopted in the Board's December 24, 1986, order approving the commercial paper activity proposed by Bankers Trust New York Corporation, or other conditions, should be established to address possible adverse effects.

Upon the expiration of the public comment period, depending upon the comments received, the Board may wish first to consider the legal issue presented by the application under the Glass-Steagall Act in order to determine whether there is a legal basis for considering whether the activities could be permitted for a bank holding company under the Bank Holding Company Act.

Any request for a hearing on these questions must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than April 10, 1987.

Board of Governors of the Federal Reserve System, March 3, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-4810 Filed 3-6-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Board of Scientific Counselors; Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

Name: Board of Scientific Counselors

Date: March 24-25, 1987

Place: Room 1003 (Lobby Conference Room), Centers for Disease Control, 1600 Clifton Road, N.E. Atlanta, Georgia 30333

Time and Type of Meeting: Open, 1:00 p.m. to 4:30 p.m.—March 24; Closed, 9:00 a.m. to 10:00 a.m.—March 25; Open, 10:00 a.m. to 12:00 noon—March 25

Contract Person: J. Donald Miller, M.D., Executive Secretary, BSC, NIOSH, CDC, 1600 Clifton Road, N.E., Atlanta, Georgia 30333, Telephone: Commercial: (404) 329-3771, FTS: 236-3771

Purpose: The Board is charged with advising the Director of the National Institute for Occupational Safety and Health on the scientific quality and efficacy of the Institute's research.

Agenda: Agenda items for the meeting will include announcements, consideration of minutes of the previous meeting, planning of site visits to review NIOSH divisions, and further meeting dates and locations. Beginning at 9 a.m. through 10 a.m., March 25, the Board will discuss certain matters the public disclosure of which could constitute a violation of Sections 552b(c)(6) and/or 552b(c)(9)(B) of Title 5, United States Code. Therefore, pursuant to said provisions and the determination of the Director, Centers for Disease Control, this portion of the meeting will not be open to the public.

Agenda items are subject to change as priorities dictate.

The portion of the meeting so indicated is open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairperson and as time permits.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: March 3, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87-4796 Filed 3-6-87; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 86E-0081]

Determination of Regulatory Review Period for Purposes of Patent Extension; Cesamet

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Cesamet and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of

Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product.

Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

On December 26, 1985, FDA approved for marketing the human drug product Cesamet (nabilone) which is indicated for the treatment of the nausea and vomiting associated with cancer chemotherapy in patients who have failed to respond adequately to conventional antiemetic treatments. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Cesamet from Eli Lilly & Co. and requested FDA's assistance in determining the patent's eligibility for patent term restoration.

The Patent and Trademark Office, however, later suspended action on the application on April 7, 1986, pending resolution of an appeal before the U.S. Court of Appeals for the Sixth Circuit in *Norwich Eaton Pharmaceuticals, Inc. v. Bowen* or the completion of rulemaking procedures for scheduling the drug by the Drug Enforcement Administration. The issue in the *Norwich Eaton Pharmaceuticals, Inc.* case focused on whether a drug product is approved on the date FDA approves final printed labeling for the drug or on the date FDA issues a letter stating that the NDA is approved. The Sixth Circuit recently ruled in favor of FDA, holding that a drug product is approved on the date FDA issues a letter stating that the NDA is approved. Shortly thereafter, in a letter dated February 9, 1987, FDA advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the active ingredient, nabilone, represented the first permitted commercial marketing or use of that active ingredient. This Federal Register notice now represents FDA's determination of the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Cesamet is 4,304 days. Of this time, 2,895 days occurred during the testing phase of the regulatory review period, while 1,409 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective: March 16, 1974. FDA has verified the applicant's claim that the notice of claimed investigational exemption (IND) for the drug became effective on March 16, 1974.

2. The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act: February 17, 1982. FDA has verified the applicant's claim that the new drug application for Cesamet (NDA 18-677) was initially submitted on February 17, 1982.

3. The date the application was approved: December 26, 1985. FDA has verified the applicant's claim that NDA 18-677 was approved on December 26, 1985.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension,

this applicant seeks 731 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before May 8, 1987, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before September 8, 1987, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 27, 1987.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 87-4819 Filed 3-6-87; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BDM-040-N]

Medicare and Medicaid Programs; ICD-9-CM Coordination and Maintenance Committee Meeting

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the next meeting of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM) Coordination and Maintenance Committee. The public is invited to participate in the discussion of the topic areas.

DATE: The meeting will be held on Tuesday, April 7, 1987, and Wednesday, April 8, 1987, beginning at 9:30 a.m. to 4:00 p.m. Eastern Standard Time.

ADDRESS: The meeting will be held in Room 703A Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Betty See, (301) 594-4885.

SUPPLEMENTARY INFORMATION: The ICD-9-CM is the clinical modification of the World Health Organization's International Classification of Diseases, Ninth Revision. It is the coding system required for use by hospitals and other health care facilities in reporting both diagnoses and surgical procedures for Medicare, Medicaid, and all other health-related DHHS programs. The work of the ICD-9-CM Coordination and Maintenance Committee will allow this coding system to continue to be an appropriate reporting tool for use in Federal programs.

The Committee is composed entirely of representatives from various Federal agencies interested in the International Classification of Diseases (ICD) and its modification, updating, and use for Federal programs. It is co-chaired by the National Center for Health Statistics and the Health Care Financing Administration.

At this meeting, the Committee will discuss autologous bone marrow transplants, placement of venous catheter for chemotherapy access, anesthesia use with procedures, polysomnogram and multiple sleep latency test, phototherapy for neonatal jaundice, debridement, and other topics.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13.773, Medicare-Hospital Insurance Program; No. 13.774, Supplementary Medical Insurance)

Dated: March 2, 1987.

William L. Roper, M.D.,

Administrator, Health Care Financing Administration.

[FR Doc. 87-4850 Filed 3-6-87; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

Designation of Medically Underserved Populations Recommended by the Chief Executive Officer and Local Officials of a State

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: Under the provisions of section 330(b)(6) of the Public Health Service (PHS) Act, 42 U.S.C. 254c(b)(6), as recently amended by Pub. L. 99-280, the Governors of the States of Pennsylvania and Maine have asked the Secretary of Health Human Services (HHS), to designate specific populations within their States as medically underserved populations (MUPs). Public Law 99-280 amends section 330 of the

PHS Act to allow such designation of MUPs which do not meet established criteria if the chief executive officer and local officials of the State recommend the population for designation.

The amendments to section 330 made by Pub. L. 99-280 also provide that the Secretary must notify and consult with the chief executive officer of the State, local officials of the State, and the State organization, if any, which represents a majority of Community Health Centers in such State, before designating or terminating designation of MUPs. HHS is currently developing regulations to specify procedures for providing such notice and opportunity for comment. Until these regulations are published, this notice provides an opportunity for local officials and appropriate Community Health Center organizations of the States of Pennsylvania and Maine to comment on the recommendations of the Governors of these States to designate as MUPs the areas described in this notice. Also, until regulations are published to define "local officials" and set other conditions, this notice provides the vehicle for "local officials" to recommend MUP designation as provided in section 330(b)(6) for the populations which do not meet established designation criteria and which are specified in this notice.

DATE: Comments should be in writing and should be received by April 8, 1987. If no negative recommendations are received within this period, the populations specified in this notice will be designated as MUPs by the Secretary. Negative recommendations will be investigated and, if determined by the Secretary to be valid, substantial and persuasive rebuttals of the Governors' justifications, and notice will be issued within 45 days from the date of publication of this notice denying designation of the population(s) as MUPs. If no notice is published within this time period, the populations are to be considered designated as MUPs by the Secretary.

ADDRESS: Mail comments to Mr. James Purvis, Director, Office of Program and Policy Development, Bureau of Health Care Delivery and Assistance, 5600 Fishers Lane, Room 7-15, Rockville, Maryland, 20857.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Bohrer, Director, Division of Primary Care Services, Bureau of Health Care Delivery and Assistance, 5600 Fishers Lane, Room 7A-55, Rockville, Maryland 20857, (310) 443-2260.

SUPPLEMENTARY INFORMATION: Section 330 of the PHS Act provides that grants may be made to public and nonprofit private entities to plan, develop and

operate Community Health Centers which serve medically underserved populations. The PHS Act and implementing regulations define a medically underserved population as the population of an urban or rural area designated by the Secretary as having a shortage of personal health services. The PHS Act, as recently amended by Pub. L. 99-280, provides at section 330(b)(6) that the Secretary may designate a medically underserved population that does not meet medically underserved population criteria set forth in regulations to be promulgated in accordance with section 330(b)(4) if the chief executive officer of the State in which such population is located and the local officials of such State recommend the designation of such population based on unusual local conditions which are a barrier to access to, or availability of, personal health services. As noted above, the Secretary is currently in the process of developing regulations to implement the various provisions of Pub. L. 99-280. The Secretary has determined that it would be inappropriate to delay acting on requests of Governors Thornburg and Brennan until the regulations are published.

Therefore, the Secretary is seeking comments and recommendations from local officials of the particular areas involved as well as from the organization which represents a majority of the Community Health Centers in the State on these proposed designations.

The populations which have been recommended for designation are:

(1) **Pennsylvania**—The service population of the Centennial Comprehensive Health Care Center, in Warminster, Bucks County.

This population is recommended for designation as a medically underserved population because Centennial is the primary provider of health care to the residents a Warminster Heights, an economically disadvantaged community within affluent Bucks County. The majority of the population of Warminster is below the poverty income level or can be classified as "working poor." The working poor, while employed, have little or no health benefits to defray the cost of their health care. Forty-four percent of Centennial's patients have limited English-speaking ability, which is an additional barrier to accessibility. Ninety-six percent of Centennial's clients have incomes at or below 200 percent of the poverty level as determined under the Department's Poverty Income Guidelines, *Federal Register* Vol. 51, pages 5105-5106.

The availability of physician care is limited by the facts that less than 25 percent of the physicians are accepting new medical assistance patients, and the local hospital has no outpatient services available. Primary care in contiguous areas is distant and restricted by the cost of public transportation.

(2) **Maine**—The service population of the Scott-Webb Memorial Medical Center in Hartland, Maine, including populations in Athens, Corinna, Hartland, Palmyra, Pittsfield and St. Athens.

This population is recommended for designation as a medically underserved population because 18.7% of the Scott-Webb Center's service area population have incomes below the national poverty level. In addition, over 50% of population have incomes that are below 200% of the poverty level.

The average annual fertility rate for the period 1980-1984 for the State was 63.72 per 1000 females. For the Scott-Webb service population for the same 5 year period, the fertility rate reached 96.77, which is 52% higher than the State average. The national rate for 1981 was 52.7.

Dated: February 20, 1987.

David N. Sundwall,

Administrator.

[FR Doc. 87-4817 Filed 3-6-87; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

Academic Research Enhancement Award

In its report accompanying the Fiscal Year 1985 appropriation for the National Institutes of Health (NIH), Congress called for an initiative to strengthen the research milieu of non-research-intensive, four-year colleges and universities which provide undergraduate training for a significant number of our nation's research scientists. In FY 1985, the NIH made \$5,000,000 available for this purpose and was able to award 75 "Academic Research Enhancement Awards" (AREAs). In FY 1986, 146 such grants were awarded, amounting to \$9,570,000. This award is designed to enhance the research environment of educational institutions that have not been traditional recipients of NIH research funds. The award is intended to support new research projects or expand ongoing research activities proposed by faculty members of these institutions in areas related to the health sciences.

Applications for FY 1987 AREA grants are currently undergoing review for scientific merit. Since it is anticipated that additional funds will be available next year, the NIH is inviting grant applications for the FY 1988 competition for AREA grants.

Eligibility requirements of the AREA Program include the following:

Applicant Institutions

- Must be a domestic institution offering baccalaureate or advanced degrees in the sciences related to health.
- Have received an NIH Biomedical Research Grant (BRSG) in no more than three of the seven fiscal years from FY 1981 through FY 1987.
- Health professional schools (e.g., schools of medicine, dentistry, nursing, osteopathy, pharmacy, veterinary medicine, public health, allied health and optometry) are eligible if they meet both criteria above, as are officially discrete campuses of a university.
- Multiple applications proposing different research projects may be submitted by an applicant institution.

Applicant Principal Investigators

- Must not have active research grant support (including an AREA) from either NIH or the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA) at the applicant institution at the time of award of an AREA grant.
- May not submit a regular NIH or ADAMHA research grant application for essentially the same project as a pending AREA application.
- Are expected to conduct the majority of their research at their own institution, although limited access to special facilities or equipment at another institution is permitted.
- May not be awarded more than one AREA grant.

Those in doubt about eligibility should consult their institution's Office of Sponsored Research, or the NIH Office of Special Programs and Initiatives, OERT, (Building 31, Room 1B54, NIH, Bethesda, MD 20892, 301/496-1968).

Funding decisions will be based on the proposed research project's scientific merit and relevance to NIH programs, and the institution's contribution to the undergraduate preparation of doctoral-level health professionals. Among projects of essentially equivalent scientific merit and program relevance, preference will be given to those submitted by institutions that have granted baccalaureate degrees to 25 or more individuals who, during the period 1977-1986, obtained academic or professional doctoral degrees in the health related sciences.

AREAs are awarded on a competitive basis. Applicants may request support for up to \$50,000 in direct costs (plus applicable indirect costs) for a period not to exceed 24 months. Although this award is non-renewable, it will enable qualified individual scientists within the eligible institutions to receive support for feasibility studies, pilot studies and other small-scale research projects preparatory to seeking more substantial funding from the regular NIH research grant programs.

Applications for this award will be accepted under the regular application submission procedures of the Division of Research Grants (DRG) of NIH. Grant applications must be prepared and submitted on PHS 398 grant application forms. An abbreviated format and simplified instructions will be provided for use in preparing these applications. The receipt date is June 22, 1987.

Those individuals and institutions meeting eligibility requirements and wishing to receive further information and/or application materials should write to: AREA, Office of Grants Inquiries, Division of Research Grants, National Institutes of Health, Westwood Building—Room 449, Bethesda, Maryland 20892, (301) 496-7441.

(Catalog of Federal Domestic Assistance Program No. 13.390, Academic Research Enhancement Award (AREA), National Institutes of Health)

Dated: February 27, 1987.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 87-4805 Filed 3-6-87; 8:45 am]

BILLING CODE 4140-01-M

Biomedical Research Technology Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Biomedical Research Technology Review Committee (BTRC), Division of Research Resources (DRR), April 10, 1987, Building 31, Conference Room 4, A Wing, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on April 10 from 2 p.m. to 4 p.m. during which time there will be comments by the Director, DRR; report of the Director, BTRC; and comments by the Assistant Director for Review, DRR, on the revised PHS 398 form. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and Sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public from approximately 9 a.m. on

April 10 until 2 p.m. for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, Bldg. 31, Rm. 5B-10, National Institutes of Health, Bethesda, MD 20892, (301) 496-5545, will provide a summary of the meeting and a roster of committee members upon request. Dr. Caroline Holloway, Executive Secretary, Biomedical Research Technology Review Committee, Division of Research Resources, Bldg. 31, Rm. 5B-41, National Institutes of Health, Bethesda, MD 20892, (301) 496-5411, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.371, Biotechnology Research, National Institutes of Health)

Dated: March 2, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-4806 Filed 3-6-87; 8:45 am]

BILLING CODE 4140-01-M

Minority Biomedical Research Support Subcommittee of the General Research Support Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Minority Biomedical Research Support Subcommittee (MBRSS) of the General Research Support Review Committee (GRSRC), Division of Research Resources (DRR), March 26-27, 1987, Building 31, Conference Room 9, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on March 27, from 1:30 p.m. to adjournment to discuss policy matters relating to the Minority Biomedical Research Support Program (MBRSP). Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and Secs. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 26, from 8:30 a.m. to 5 p.m. and on March 27, 8:30 a.m. to 12:30

p.m. for the review, discussion, and evaluation of individual grant applications.

The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health, Building 31, Room 5B10, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of the meeting, and a roster of the committee members upon request. Dr. Lawrence J. Alfred, Executive Secretary, (301) 496-4390, will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.375, Minority Biomedical Research Support, National Institutes of Health)

Dated: March 2, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-4799 Filed 3-6-87; 8:45 am]

BILLING CODE 4140-01-M

National Eye Institute; Meeting of the Vision Research Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Vision Research Review Committee, National Eye Institute, March 26-27, 1987, Conference Room 8, Building 31, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on March 26 from 8:30 a.m. to 9:30 a.m. for opening remarks and discussion of program guidelines. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 9:30 a.m. on March 26, until recess and on March 27 from 8:30 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Kay Valeda, Committee

Management Officer, National Eye Institute, Building 31, Room 6A-03, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4903, will provide summaries of the meeting, rosters of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Corneal Diseases Research; 13.869, Cataract Research; 13.870, Glaucoma Research; and 13.871, Sensory and Motor Disorders of Visual Research; National Institutes of Health)

Dated: March 2, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-4800 Filed 3-6-87; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the National High Blood Pressure Education Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute, on April 24, 1987, from 8 a.m. to 12 noon, at the Tropicana Hotel, 3801 Las Vegas Boulevard, Las Vegas, Nevada 89109, (702) 739-2222.

The meeting is being held as an adjunct to the National Conference on High Blood Pressure Control, April 24-26, 1987, Tropicana Hotel, Las Vegas, Nevada.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National High Blood Pressure Education Program. Attendance by the public will be limited to space available.

For the detailed program information, agenda, list of participants, and meeting summary, contact: Dr. Edward J. Roccella, Coordinator, National High Blood Pressure Education Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A05, Bethesda, Maryland 20892, (301) 496-0554.

Dated: March 3, 1987.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 87-4807 Filed 3-6-87; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the National Digestive Diseases Advisory Board

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board and its subcommittees on March 30, 1987, 8:30 a.m. to approximately 4 p.m. at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the implementation of the long-range digestive diseases plan. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Digestive Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: March 3, 1987.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 87-4808 Filed 3-6-87; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Environmental Health Sciences; Superfund Hazardous Substances Basic Research and Training Grant Program; Meeting

Notice is hereby given of a meeting to be held at the National Institute of Environmental Health Sciences, Main Conference Facility, Building 101, 111 Alexander Drive, Research Triangle Park, North Carolina on March 27, 1987. The meeting will begin at 9:30 a.m. and end at approximately 4:00 p.m. The meeting is open to the public. This meeting is in follow-up to a meeting held on December 15, 1986 (51 FR 43089, November 28, 1986).

Background

The Superfund Amendments and Reauthorization Act (SARA) of 1986 establishes a basic university research and education program within the Department of Health and Human Services. The law authorizes the Secretary, acting through the National Institute of Environmental Health Sciences (NIEHS), to conduct basic research including epidemiologic and ecologic studies in a broad range of areas related to understanding and attenuating the potential health effects

resulting from exposure to hazardous substances. NIEHS is also authorized to allocate up to 10 percent of funds appropriated for this purpose to provide grants for training of State and local workers at Superfund sites and for long-term, post-graduate training in the biomedical sciences and the geosciences for professionals working in the hazardous waste field. Congress authorized funds for this program for a five-year period beginning in October 1986. The total amounts reserved for research, development, demonstration and training are \$3 million in Fiscal Year 1987, \$10 million in 1988, \$20 million in 1989, \$30 million in 1990, and \$35 million in 1991. These dollar amounts for Fiscal Years 1989-1991 are budget ceilings and actual amounts will be appropriated each year consistent with the Federal budget process. The appropriation for Fiscal Year 1987 contains \$3.0 million and the President's proposed budget for FY 1988 requests \$9.45 million for this program.

Section 209(b) of SARA limits recipients of awards to "accredited institutions of higher education," which are defined in the Higher Education Act, 20 U.S.C. 3381. It is clear in the language of the law and in the legislative history that universities are intended to be the institutional focus for these research grants and the grantee must be substantively involved in the development, implementation, and conduct of the research. However, grantees are permitted under the law, and encouraged by the NIEHS, to subcontract as appropriate with any organization, public or private, necessary to conduct their research. These organizations may include generators of hazardous wastes, persons involved in the detection, assessment, evaluation, and treatment of hazardous substances, owners and operators of facilities at which hazardous substances are located, and state and local governments.

The purposes of this meeting are to: 1. Briefly review the Program Announcement published on January 31, 1987, in which the first phase of the Superfund Basic Research and Education was described. This first phase concentrated solely on biomedical research opportunities which are to be the focus of first year funding.

2. Solicit comments from the attendees (and in writing from interested parties unable to attend the meeting) on the engineering, ecological, and hydrological research opportunities suggested in this Meeting Announcement. Since the biomedical research opportunities were discussed in detail in a public meeting in

December 1986, these will not be discussed in this meeting except in the context of their relationship to the overall multidisciplinary research program.

3. Discuss the intended integration of advanced or graduate training into the second year of the multidisciplinary research program.

Those wishing to make oral presentations on the engineering, ecological, and/or hydrological components of the program will be given an opportunity to do so. These presentations should be limited to no more than seven minutes. Oral presentations should be supported by written documents that can be left with Ms. Riley at the meeting.

A draft program description to be summarized at the meeting is described below. Written comments are encouraged, and it is requested that they be received by close of business on March 20, 1987. In order to accommodate as many people wishing to speak as possible, persons wishing to make oral presentations should contact Ms. Riley at the address below no later than March 20, 1987.

Ms. Janet A. Riley, Administrative Office, OD, NIEHS, P.O. Box 12233, Research Triangle Park, NC 27709

Attendance is limited only by space available. For further information regarding the meeting, please contact Ms. Riley at the above address or telephone 919-541-7621 or FTS 629-7621. The official Government representative for this meeting will be Dr. Anne P. Sassaman.

Dated: March 3, 1987.

James B. Wyngaarden,
Director, National Institutes of Health.

Draft Program Background and Description

This NIEHS hazardous substance basic research and training complements a broader research and development component of the Superfund program managed by three Federal agencies.

The Environmental Protection Agency (EPA), the principal manager of the Superfund program, has specific mandated research responsibilities in the areas of assessment of the environmental impact of hazardous substances at sites, hazardous waste containment and destruction technologies, and environmental transport and fate. Protection of public health and welfare is the primary goal of EPA, and thus it also has authority to conduct and support research to monitor and test for hazardous substances in the

environment and for health effects and health risks of hazardous substances.

The Agency for Toxic Substances and Disease Registry (ATSDR) in the U.S. Public Health Service was established by the original Superfund law in December 1980. ATSDR provides site-specific public health assessments and advisories to EPA and to state and local agencies, citizens, and health care providers. In addition, ATSDR supports applied research activities such as the development and evaluation of toxicologic profiles for hazardous substances found at Superfund sites, and the initiation (in cooperation with the HHS's National Toxicology Program and EPA's Toxic Substances Control Act and Federal Insecticide, Fungicide, and Rodenticide Act programs) of toxicologic testing where necessary for these substances. ATSDR also supports research into improved clinical laboratory methods to assess human exposure in communities affected by Superfund sites and may establish exposure registries, and health surveillance systems and conduct epidemiologic studies.

NIEHS's basic hazardous substances research and training responsibilities are a new facet of the Superfund program and are intended to provide a wide range of research to address the broad public health concerns arising from the release of hazardous substances and hazardous wastes during catastrophic incidents and from uncontrolled, leaking waste disposal sites. NIEHS is an institute of the National Institutes of Health and for 20 years has been the Federal focus for basic environmental health and related research. The Superfund reauthorization builds on NIEHS's history of conducting in-house research and supporting grants for environmental health sciences research, and specifically requires that NIEHS Superfund basic biomedical research and training grants be awarded in accordance with Title IV of the PHS Act. Under Title IV, NIEHS is required to follow the grants procedures established by the National Institutes of Health. NIEHS must outline research opportunities and promising areas of inquiry relevant to a particular field of biomedical science (in this instance, the broad field of hazardous substance health effects), and publicize the Program Announcement in the *NIH Guide to Grants and Contracts*.

Applications for grants for specific research projects are solicited from institutions and organizations through publication of Program Announcements or Requests for Applications in the *NIH Guide*. (Under SARA eligibility is limited

to universities.) All applications for research programs must be evaluated for scientific merit by a peer review panel of eminent, primarily non-Federal scientists, taking into account the training and experience of the researchers and the facilities and equipment of their institutions. A second level review is conducted by the National Advisory Environmental Health Sciences Council (NAEHSC).

Grants are awarded by NIEHS on the basis of the recommendations from the peer reviewers and the Council, programmatic priorities of the Institute, and the availability of funds. This mechanism maximizes the strengths of these interrelated groups. The NIEHS staff (in collaboration with their colleagues in EPA and ATSDR, and the broader scientific community) define broad areas of research opportunities; the academic research community conceives specific research inquiries related to the broad public health problem; and the scientific peer review system identifies the best applications for funding support.

NIEHS will schedule annual meetings to facilitate exchange of information among grantees and to foster communication and coordination among the relevant Federal agencies.

NIEHS will award grants for biomedical research in the first fiscal year (1987-88) of the program. Applicants preparing grants for first year funding were encouraged to develop supplemental applications in subsequent years if they wished to expand their research to include engineering and/or ecologic components. This first phase was described and grant applications were solicited in an announcement published in the *NIH Guide for Grants and Contracts* on January 30, 1987. Applicants for funding in the second year (these FY88 grants will be awarded by September 1988 from applications received by December 1, 1987) should add engineering and/or ecologic research components to a basic biomedical focus. NIEHS recognizes the importance of prevention in the protection of public health. Consequently, applicants are asked to consider basic research into methods to attenuate the toxicity or other hazards associated with hazardous substances or to mitigate the effects of exposure on populations at risk.

NIEHS intends to augment research programs funded by these grants with advanced and graduate training in related disciplines described in the law. Applicants may request funds in amounts not to exceed six percent of their direct cost requests for research to

support training in the fields of environmental and occupational health and safety, the public health and engineering aspects of hazardous waste control, and/or in the geosciences such as hydrogeology, geological engineering, geophysics, and geochemistry. NIEHS will evaluate this aspect of the program at the end of Fiscal Year 1988. If sufficient additional funds for such advanced training are appropriated, NIEHS will consider establishing a separate training grant program.

The short courses and continuing education for State and local health and environmental and other agency personnel engaged in the handling of hazardous substances, in the management of facilities at which hazardous substances are located, and in the evaluation of the hazards to human health presented by such substances may be carried out in conjunction with the National Institute for Occupational Safety and Health.

The research and development section of the Superfund reauthorization provides a unique opportunity for the creation of university-based biomedical research programs with close ties to engineering and hydrogeologic sciences and to the field of ecology. These broad programs have great potential for improving the understanding of the relationships between human exposures to hazardous substances and adverse health effects.

NIEHS plans to take advantage of this opportunity to solicit and support from Superfund monies research grants which will ultimately become multidisciplinary centers in universities.

The following discussion of research opportunities for the components of this program is intended to offer examples of possible approaches as identified by the NIEHS through consultation with the scientific community. These examples are only illustrative of types of research efforts that may be appropriate to this program and are not meant to be all-inclusive or restrictive. The Institute encourages new and innovative approaches because most of the approaches now used in the field will probably be inadequate to provide the new information needed to deal with Superfund problems.

Draft Outline of Some NIEHS Superfund Hazardous Substances Basic Research and Development Opportunities

A. Methods/Technologies to Detect Hazardous Substances in the Environment

- New methods need to be developed to detect and determine the truly toxic and most hazardous chemicals or agents

present at or near dump sites. These methods should have the sensitivity and specificity needed to detect the lowest concentrations of chemicals which could pose toxic threats to humans. Special attention must be paid to the fact that most chemicals or hazards at dump sites will occur in complex mixtures—both of chemicals of many kinds, as well as with soil, water, and air. Development of these new methods for detection and quantification of chemicals present at or near dump sites should be linked to the study and review of the toxicity of those chemicals present at the sites, so as to have guidelines regarding the sensitivity and specificity needed in the new methods.

- Dose-response relationships need to be established for likely amounts and frequencies of environmental exposures to pollutants and for specific responses in animals to these pollutants. A variety of responses or a pattern of responses rather than a single response such as the production of new P-450 isozymes would be useful. Validation studies need to be done with populations in the laboratory and the field.

- Improved techniques are needed for measuring and modeling movement and alteration of chemicals through the media surrounding the waste dump so as to increase the reliability of measurements for risk assessment at such sites. Animals living in or near, or placed at the dump sites, might be sampled to detect the presence and spread of truly toxic chemicals from the dump and establish the important adverse health effects of these chemicals in animals. These animals might be feral (rats, rabbits, fish, reptiles, birds) or domestic (pets of households close to the dump). Attention should be given to selection of proper indicator species (species that show biological effects of leaching pollutants most clearly and earliest at lowest concentrations of the toxics) at dump sites.

- Qualitative and quantitative information on the composition of waste leachates, and how this composition changes during transport through soil are needed. For example, understanding of the mechanisms of leachate generation as a function of the waste's physical and chemical characteristics and of the disposal environment are needed. Also, studies are needed on how the form of the contaminant in solution, absorbed to particles or in colloidal dispersion, associated with humic or other macromolecules affects toxicity and potential for accumulation in plants and animals. Study is needed on processes of sorption to soil surfaces,

volatilization of volatile organics into air or into soil pores, microbial degradation of contaminants in the subsurface, and the effects of all these processes on leachate composition and toxicity. Models of aquifer materials and validation of models by field tests are also needed.

- Study is needed on whether and how ecosystems adapt to continuing, slow leaks of chemicals from dump sites. Interactions of food webs with toxic substances should be looked at from two general points of view: (1) transformation, transfer, and transport processes performed on the chemicals by the food webs; and (2) possible disruptive effects of the chemicals or toxics on the food web. More information is needed about the structure of food webs, especially the primary paths of flow of matter. The mobilities of critical organisms that may disperse toxic substances must be known.

- Studies are needed of the impact of toxics and leachates on ecosystems. These should include study of stages and processes (and their rates) by which ecosystems fail and recover from toxicant stress or exposures. Both resistance and resilience need to be studied.

- New methods are needed to evaluate the bioavailability of toxicants in environmental samples. Bulk chemical analysis of soil, water, and air is not sufficient. How well do dump site chemicals in soil, water, and air get into the animal or human when these latter come in contact with them? What factors change bioavailability? How can bioavailability best be modeled in the lab (e.g., what extraction methods best model the release of toxics from soil)?

- More information is needed about the role of plants and vegetation in affecting the movement of contaminants from dump sites, including plant uptake/concentration/storage, degradation, and immobilization of toxics.

B. Advanced Techniques for Detection, Assessment, and Evaluation of Effects on Human Health of Hazardous Substances/Methods to Assess Risks to Human Health Presented by Hazardous Substances

- The principal concern which underscores the need for additional investigation and application of research findings is that the actual, toxicity of the hazardous substances (particularly those found in chemical waste disposal and storage sites is unknown. Also, the mechanisms by which these toxic and hazardous materials cause health and ecologic damage are not clearly understood. This

research should carry with it a probability that it will resolve some of these issues and will better define populations of greater risks.

- Methods need to be developed for human dosimetry, both by personal monitors or by sampling tissues. Specific and sensitive methods to detect and quantify toxic chemicals in human tissues or excreta, at the concentrations likely to occur after environmental exposures, are needed for almost all toxic chemicals likely to occur at dump sites. The application of newer analytical techniques to biological samples often requires extensive adaptation and validation. It is desirable to couple these studies with pharmacokinetic analysis, and to link all of this with studies of the biological effects of the exposures. In these ways, carefully designed epidemiological and risk assessment studies of persons exposed to dump site chemicals may be carried out.

- Study is also needed of the effects of waste chemicals on organisms at the site. Is there any change in the pathogenicity of these? Are more pathogenic bacteria, protozoans, etc., likely at these sites? Are plants another source of significant animal or human exposures to hazardous substances?

- Methods to detect and quantify chemical metabolites and adducts of chemicals with human or animal tissue macromolecules (enzymes, other tissue proteins, and DNA/RNA) also may be useful in detecting and quantifying exposure and in estimating times of exposure to hazardous materials or chemicals. Some metabolites or stable adducts may give estimates of cumulative exposures to chemicals in humans, animals, and plants.

- Methods are needed to "fingerprint" the biological effects of specific hazardous chemicals or pollutants so that exposure to such chemicals can be more easily and clearly defined and set apart from effects produced by other chemicals or causes. These methods should be applicable to humans and to the levels of (and perhaps intermittent exposures to) hazardous chemicals likely to be present at waste sites.

Exposures to toxic chemicals may result in different gene expressions or repressions and these might be detected by gene products—different types or amounts of enzymes marking their activation or repression could also mark exposures to toxic chemicals. Three examples follow.

The peculiar cytochrome P-450 isozymes produced in both animals and humans and in several tissues by some pollutants might be used to detect and quantify the exposure of the person so

sampled to substances such as PCBs or TCDD.

New enzyme formation following pollutant exposure may be detected by measuring enzyme activity. Newer techniques for such measurements can be applied to humans and animals and may be done with non-radioactive (e.g., carbon-13 labeled) "substrates."

Specified induction of sets of genetic changes might distinguish between different mutagens or chemicals. An example is the increase in sister chromatid exchanges in cultured lymphocytes from animals and humans exposed to some PCBs or cigarette smoke.

- Behavioral or neurological effects of low-level exposures to toxic chemicals might be investigated as possible early indicators of pollutant contacts around dump sites. An example is the use of learning tests or video challenge games designated to measure small decrements in integrated CNS functions produced by neurotoxic chemicals.

- Possible effects of dump-site chemicals on all aspects of the reproduction process need to be assessed in animals and humans. Several approaches to screening for these effects might be incorporated into a research proposal. In males, semen and sperm analysis is possible for measurement of chemicals, adducts and/or metabolites; it is also possible to study effects on sperm biochemistry, morphology, activity, ability to fertilize hamster eggs, etc. In females, present tests are probably inadequate and new tests are needed, but menstrual cycle irregularities, time to menopause, and failure to conceive are now used.

Pregnancy rates and outcomes may be monitored, and studies on fetuses and newborns of animals or people living near dump sites might be very valuable. Maternal exposures to chemicals can be indicated by changes in maternal, fetal, and placental enzymes or by testing for the presence of chemicals, metabolites, and adducts in amniotic fluid and in maternal, placental, and fetal or newborn tissues (sampled before or at birth, when amniocentesis is done, or when there is a miscarriage).

Teratology and later development defects in animals (feral or domestic pets) or humans and their relation to chemical exposure (e.g., *in utero*) needs study, both by laboratory testing or dump site chemicals and careful epidemiology in field studies. Early tests of pregnancy (hCG assays) may be helpful for both diagnosis and disease prevention strategies.

- Immunological studies of exposed populations might be useful because

many pollutants can change immune reactions, such as the TCDD- or PBB-induced depression of the immune response to viruses. This area needs better methodology and validation for low level exposures.

- Model systems are needed which stand between the laboratory and field for determining effects of toxicants on ecosystems. These models or computer simulations must then be validated for a variety of toxicants and systems. One application would be in the study of effects of chemicals and toxics on the food web. Studies are needed of the effects of chemicals or toxics on keystone predators or mutualists or individual species that play pivotal roles in food web structures. These include plants as well as animals.

- Ecological equivalents of epidemiology need to be developed. Both exposure and effects analysis are needed and are analogous to similar studies of risk analysis and epidemiology. An integrated approach involving manipulation, monitoring, and modeling of ecosystems is needed to better estimate ecological risk. More information is needed on the relative merits of cells, individual animals, population, and ecosystems in assessing risks. Studies are needed or risks to plants of soil pollutants of various kinds (to include growth of mature plants, but also effects on seeds, germination, and sprout growth).

C. Basic Biological, Chemical, and Physical Methods to Reduce Either the Amount or the Toxicity of Hazardous Substances.

Thermal Treatment/Degradation of Wastes

These processes may be arranged in terms of the temperature at which they are run. There is also an ordering in terms of bulk quantities of waste to be processed—highest temperatures are generally reserved for small volumes of materials.

High Temperature Processes

These are suitable for wastes that do not contain more than 80–90 percent inert or non-combustible material (otherwise such combustible material must be added). These processes involve either pyrolysis or combustion with air. Two temperature ranges are given: 800–1000 °C; and 1000–2000+ °C. Both these temperature ranges when put into large scale practice may fall short of complete destruction of organic waste. Basic research is needed to understand the chemical and physical processes taking place so as to maximize waste destruction. New toxic

substances can be created in these processes [at all temperatures, but differences at each temperature (e.g., dioxins at medium and higher temperatures)], and more needs to be known about conditions favoring this (e.g., reaction time, wall quenching, incomplete mixing, operational "upsets"). The toxicology of pyrolysis products needs much study.

- Study is needed of the "reactive flows" that occur in pyrolysis (e.g. when pyrolysis products mix too rapidly with cold air or surfaces). New tools may be useful here—molecular beam sampling and detailed GC/MS analysis of stable species, modeling of large reaction networks by computers and estimation of rates of elementary reactions, and laser diagnostics for information about flow and temperature in fields.

- 800–1000 °C Temperature Range: A general need here is for understanding and documenting the formation and toxicology of products from these processes. Specific aspects include:

- Study is needed of the effects of solids on the reaction and pyrolysis of organics.

- Study is needed of leaching from buried porous ash products from these processes.

Study is needed of dusts produced in these processes—do these trap toxic combustion products for later release?

- 1000–2000+ °C Temperature Ranges. Large numbers of unknown products with unknown toxicity can result (e.g., vaporization of silica, alumina, and iron oxide can form sub-micron sized aerosols); "upsets" can produce soots; and carbon-metal oxide aerosols of unknown toxicity can form. Aerosols can be substrates for condensing volatiles too.

Especially needed are devices for rapid on-line detection and correction of malfunctions in incineration devices operated at these temperatures, especially in populated areas. Knowledge of effluent composition and development and application of devices which respond to those of toxic import are needed.

Medium Temperature (170–600 °C) Range

Slow reaction times here often require catalysts. Research is needed on catalyzed reactions—what are good catalysts, and what are the reaction kinetics? "Wet air" oxidation processes may be of interest in handling more dilute wastes.

Products of these processes need to be studied—composition, toxicity, and mechanisms of formation (and parameters affecting such formation if toxics are produced).

Research is needed on oxidation of organic compounds near the critical pressure and temperature of water. Especially needed are the study of rates at high density conditions, of ionic reactions, and of solubility and phase relationships (inorganic salts may precipitate, and rate of reaction of normally insoluble organics may increase).

Alternatives to Thermal Destruction

These include (1) biological conversion, or some kind of separation to increase toxic chemical concentrations to the point where other processes or immobilization can be used; or (2) chemical conversion or neutralization (e.g., with active oxidizing agents). Research is needed to develop combinations of appropriate organisms, reactor design, and operating conditions (including controls and ability to deal with changing biological and reactor conditions) which deal best with all kinds of hazards from dilute wastes to highly toxic effluents. Some hazardous substances may be so toxic as to kill the bacteria intended to degrade them. Degradation time is an important consideration because very slow degradation may not be useful or practical in the Superfund program.

Important research considerations regarding "superbugs" specifically tailored to destroy toxic wastes are: the dangers in their use (pathogenicity and spread to the environment, etc.), the technological problems in using "superbugs" [e.g., getting enough nutrients (especially O₂) to them] during the waste-degrading process, and best mix of "superbugs" and waste in various environmental media such as water and soil.

Much information is needed about the effects of toxics on organisms and vice versa, both at the waste site and in any disposal facility. It is possible that toxic wastes can affect the production of toxins or toxic metabolites of waste chemicals by organisms (both at the site and added as "superbugs"), and this needs to be studied more (e.g., the production of vinyl chloride from TCE).

Microbial communities present at dump sites (and in waste degrading and treatment chambers) need to be characterized because the waste chemicals present may favor more dangerous organisms (e.g., toxics or contamination can favor the shift from gram positive to gram negative organisms and larger populations of pathogenic ameba). More information is needed about what favors such changes.

- New approaches for concentrating and separating wastes are needed (e.g.,

absorption on charcoal and clays). Extractions (with solvents and oils) are possible, but need study. New ways of segregating wastes are needed too (e.g., encapsulation).

- New destructive techniques are required (e.g., the use of ozone, UV light, chlorine, and other types of chemical reactions and neutralizations still requires much study, especially in mixtures). Do these methods sometimes produce more toxic compounds from some components, while at the same time they destroy other components in a mixture? How can these destructive techniques best be applied in various media and with larger amounts of waste? Toxic metals need to be removed and ultimately destroyed or disposed of; perhaps organisms or other separation processes can be used to concentrate these too.

- New techniques for minimizing the quantities of hazardous wastes produced and requiring disposal need to be developed. These may necessitate changes in manufacturing processes, use of recycling, use of concentrating steps, and conversion of toxic byproducts to usable materials.

Procedures for Treatments Which May Speed Up the Excretion and Degradation of Pollutants Once They Are in the Body

Are selective applications of diuretics, enzyme inducers, and absorbents useful? There are some examples of where this has been tried in animals and humans (e.g., treating with Dilantin R/diphenylhydantoin to speed up metabolism and clearance of DDT residues in cattle, use of cholestyramine [orally] to enhance fecal excretion of Kepone in humans, use of chelators to remove lead from humans). More studies along these lines are needed for a wide variety of chemicals in waste dumps.

NIEHS emphasizes the illustrative nature of these topics and encourages potential applicants to expand upon these to use institutional strengths and ideas to prepare applications directed towards the broad goals of the program as stated above. The intent is to create an environment in which various groups of scientists can interact, exchange ideas, and proceed expeditiously towards solving the complex problems of assessing and attenuating risks to human health from hazardous substances.

Program Timetable

Letters of intent will be encouraged to indicate applicant interest. These letters are not mandatory.

Proposed Timetable—Phase II

Letter of Intent: October 15, 1987
 Application Receipt Date: December 1, 1987
 Review by National Advisory Environmental Health Sciences Council: June, 1988
 Anticipated Award Date: July–September, 1988
 Application Receipt Date (Supplemental Applications Only): January 15, 1988
 Review by National Advisory Environmental Health Science Council: September, 1988
 Anticipated Award Date: September, 1988
 [FR Doc. 87-4903 Filed 3-6-87; 8:45 am]
 BILLING CODE 4140-01-M

Public Health Service

National Toxicology Program; Annual Report on Carcinogens; Meeting

Notice is hereby given of a meeting to be held at the HHS North Auditorium, 330 Independence Avenue, SW., Washington, DC on April 21, 1987. The meeting will begin at 10 a.m. and end at approximately 4 p.m. or at the conclusion of public comment if prior to 4 p.m. The meeting is open to the public.

Background

The *Annual Report on Carcinogens* is a Congressionally-mandated listing of certain carcinogens and is prepared by the National Toxicology Program (NTP) under delegation from the Secretary, Department of Health and Human Services. The pertinent provisions of section 301(b)(4) of the Public Health Service Act (42 U.S.C. 241(b)(4)), as amended by Pub. L. 95-622, requires an annual report which contains a "list of all substances (i) which either are known to be carcinogens or may reasonably be anticipated to be carcinogens and (ii) to which a significant number of persons residing in the United States are exposed * * *." The law also states that the reports should provide available information on the nature of exposures, the estimated number of persons exposed, and the extent to which the implementation of Federal regulations decreases the risk to public health from exposure to these chemicals.

To date, the NTP has published four reports. The *Fifth Annual Report on Carcinogens* is now under preparation. Comments on it were requested by notice in 51 FR 35297-98, October 2, 1986.

The purpose of this meeting is to discuss the process used to produce the *Annual Report on Carcinogens* and to receive oral and written comments regarding this process or on other issues which commenters may wish to address. These comments will be considered by NTP staff in the finalization of the *Fifth*

Annual Report and preparation of future reports.

The meeting will begin with a description by NTP staff of the process used in preparing the annual reports, including the mechanism for evaluating and selecting candidate substances. Following this presentation, NTP staff will receive comments from the audience. These presentations must be limited to 7 minutes. Oral presentations may be supported by written documents that can be left with Ms. Janet Riley at the meeting. Alternatively, written comments will be considered if received by Ms. Riley prior to the meeting (see address below).

In order to accommodate as many people wishing to speak as possible, persons wishing to make oral presentations should contact Ms. Riley at the address below no later than April 15, 1987.

Ms. Janet A. Riley, Administrative Office, OD, NIEHS, P.O. Box 12233, Research Triangle Park, NC 27709

Attendance is limited only by space available. For further information regarding the meeting, please contact Ms. Riley at the above address or telephone 919-541-7621 or FTS 629-7621. The official Government representative for this meeting will be Dr. Dorothy Canter.

Dated: March 4, 1987.

David P. Rall,
 Director, NTP.

[FR Doc. 87-4809 Filed 3-6-87; 8:45 am]
 BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-87-1682]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.
 ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ACTION: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New

Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Submission of Proposed Information Collection to OMB

Proposal: Combination and

Manufactured (Mobile) Home Lot Loans

Office: Housing

Form Number: None

Frequency of Submission: On Occasion Affected Public. Individuals or

Households

Estimated Burden Hours: 150

Status: Extension

Contact: Alan R. Stailey, HUD (202) 755-6880; Robert Fishman, OMB (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 2, 1987.

John T. Murphy,

Director, Information Policy and Management Division.

[FR Doc. 87-4919 Filed 3-6-87; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Permit; Marine Mammals

The public is invited to comment on the following application for permits to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*, the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR Part 17 and 18).

File No. PRT-715556

Applicant: Columbus Zoological Garden, 9990 Riverside Drive, Powell, Ohio 43065.

Type of Permit: Public Display.

Name of Animals: Polar bear (*Ursus maritimus*), one female.

Summary of Activity to be Authorized: The applicant proposes to import this animal for public display. This animal has been designated a public menace in Churchill, Manitoba, Canada.

Source of Marine Mammals for Display: Churchill, Manitoba, Canada.

Period of Activity: Spring 1987.

Concurrent with the publication of this notice in the **Federal Register**, the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (FWPO), 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connections with the above application are available for review during normal business hours (7:45 am to 4:15 pm) in Room 601 N. Glebe Road, Arlington, Virginia.

Dated: March 3, 1987.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87-4795 Filed 3-6-87; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[NV-930-07-4212-22]

Plats Survey Filing, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in Nevada.

DATES: Filings were effective at 10 a.m., on February 18, 1987.

FOR FURTHER INFORMATION CONTACT: Lacle Bland, Chief, Branch of Cadastral Survey, Nevada State Office, Bureau of Land Management, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, (702) 784-5484.

SUPPLEMENTARY INFORMATION: The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada.

Mount Diablo Meridian, Nevada

T. 39 N., R. 18 E.—Dependent Resurvey
T. 40 N., R. 18 E.—Dependent Resurvey
T. 39 N., R. 19 E.—Dependent Resurvey
T. 40 N., R. 19 E.—Dependent and Independent Resurvey

Those surveys were executed to meet certain administrative needs of this Bureau.

Dated: February 24, 1987.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 87-4858 Filed 3-6-87; 8:45 am]

BILLING CODE 4310-HC-M

Minerals Management Service

Outer Continental Shelf Operations; Availability of Report of the Technology Assessment and Research Program

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of report.

SUMMARY: The Minerals Management Service is announcing the availability of the report entitled "Technology Assessment and Research Program for

Offshore Minerals Operations," 1986 Report, OCS Study MMS 86-0083.

ADDRESSES: Copies of the report may be obtained without charge from the Technology Assessment and Research Branch, Minerals Management Service, Mail Stop 647, 12203 Sunrise Valley Drive, Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: Technology Assessment and Research Branch, 703-648-7752.

SUPPLEMENTARY INFORMATION: The report summarizes the research being pursued by the Minerals Management Service in support of its offshore oil and gas operations. In addition, the report discusses the objectives of the Technology Assessment and Research Program (TA&R) and its methods of operation. The TA&R Program contracts for research at universities, Government laboratories, and private companies in the categories of well control, or blowout prevention, the verification of structures and pipelines, and oil spill containment and cleanup.

The following individual projects are summarized in the report which contains 204 pages and many illustrations:

- Environmental Cracking of High-Strength Steels Under Small Amplitude Cyclic Loading in Sea Water—Crocker, Naval Research Laboratory.
- Reliability of Compliant Drilling and Production Platforms—Simiu, National Bureau of Standards.
- Dynamic Motion Study of a Floating Platform—Shields, Naval Civil Engineering Laboratory.
- Cyclic Lateral Loading of Large-Scale Pile Group—Reese, University of Texas.
- Fatigue of High Strength Steels in Sea Water—Hartt, Florida Atlantic University.
- Combustion of Oil Spills on Water—Evans, National Bureau of Standards.
- Ice-Structure Interaction—Sunder, Massachusetts Institute of Technology.
- Probability Based Design Criteria for Ice Loads—Jordaan, Det norske Veritas.
- Evaluation of Short, Large Diameter Piles for Arctic Structures—Cheang, The Earth Technology Corporation.
- Risk Analysis for Offshore Oil and Gas Operations—Tuler, Worcester Polytechnic Institute.
- Prediction Model for Viscous Drag of Soft Soils on Piles and Pipelines—Dunlap, Texas A&M University.
- Suppression of Wellhead Fires by Use of Water Sprays—Evans, National Bureau of Standards.
- Use of Radioactive Tracers for Detecting Cracks in Steel Structural

Welds in Seawater—Jones, Colorado School of Mines.

- Experimental Study of Diversers—Bourgoyne, Louisiana State University.
- An Experimental Study of a Fluidic Mud Pulser—Desbrandes, Louisiana State University.
- Technological Developments for Improved Well-Control Procedures for Deepwater Drilling Operations—Bourgoyne, Louisiana State University.
- Residual Strength of Offshore Structures After Damage—Ostapenko, Lehigh University.

Dated: February 25, 1987.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 87-4811 Filed 3-6-87; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-No. 286)]

Burlington Northern Railroad Co.; Abandonment and Discontinuance in Platte County, MO and Leavenworth County, KS; Findings

The Commission has issued a certificate authorizing the Burlington Northern Railroad Company (BN) to: (1) Abandon its 2.16-mile line of railroad, from milepost 0.00, near East Leavenworth, MO, to milepost 2.16; and (2) discontinue service over a 3.50-mile line of railroad owned by the Chicago and North Western Transportation Company (CNW), from CNW milepost 0.00 (adjacent to BN milepost 2.16) to CNW milepost 3.50, at or near Leavenworth, KS; a total distance of 5.66 miles in Platte County, MO and Leavenworth County, KS. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail

service are contained in 49 U.S.C. 10905 and 49 CFR 1152.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Norela R. McGee,

Secretary.

[FR Doc. 87-4857 Filed 3-6-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of a Stipulation of Dismissal Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 26, 1987 a proposed Consent Decree in *United States, et al. v. Upper Moreland-Hatboro Joint Sewer Authority, et al.*, Civil Action No. 85-6280 was lodged with the United States District Court for the Eastern District of Pennsylvania. The proposed Consent Decree concerns the failure of the Upper Moreland-Hatboro Joint Sewer Authority to implement an approvable pretreatment program prior to July 1, 1983. The proposed Consent Decree requires the defendant to pay a penalty of \$10,000.00. Its pretreatment program has been approved since the filing of this complaint.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States, et al. v. Upper Moreland-Hatboro Joint Sewer Authority, et al.*, D.J. Ref. #90-5-1-1-2484.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 601 Market Street, Philadelphia, Pennsylvania, and at the Region III Office of the United States Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section,

Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-4798 Filed 3-8-87; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

United States v. Domtar Inc. et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b)-(h), that a complaint, proposed final judgment, stipulation and competitive impact statement have been filed with the United States District Court for the Northern District of California in *United States v. Domtar Inc., et al.*

The complaint of the United States in this case alleges that the acquisition by Domtar Inc. ("Domtar"), through its wholly owned subsidiary Domtar Industries Inc., of the gypsum operations of Imasco Limited ("Imasco"), violates section 7 of the Clayton Act (15 U.S.C. 18). The complaint alleges that the acquisition violates the Clayton Act because its effect may be substantially to lessen competition in the manufacture and sale of gypsum board in the Pacific Southwest market, consisting of Arizona, the southern portion of California and the southern portion of Nevada.

Gypsum board is the principal material used in the construction of interior walls and ceilings for residential and commercial buildings. Only eight firms produce significant amounts of gypsum board for sale in the Pacific Southwest market. Domtar serves the market through its gypsum board plant in Long Beach, California, while Imasco serves the market through its plant in Las Vegas, Nevada, operated by a wholly owned indirect subsidiary, Genstar Gypsum Products Company ("Genstar Gypsum"). Domtar's Long Beach plant accounts for approximately 11.0 percent and Genstar Gypsum's Las Vegas plant accounts for approximately 10.9 percent of total production capacity serving the market; the two firms together would be the second largest producer of gypsum board in the market.

The proposed Final Judgment would require that Domtar, including its subsidiaries, divest all of its interest in the Pacific Southwest Operations of Genstar Gypsum within six months of the filing of the Final Judgment. Genstar Gypsum's Pacific Southwest Operations include the Las Vegas gypsum board

plant as well as associated marketing operations within the Pacific Southwest market. If Domtar does not divest the Pacific Southwest Operations within the six month period, the court will appoint a trustee to complete the divestiture.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the *Federal Register* and filed with the Court. Comments should be directed to Anthony V. Nanni, Chief Litigation I Section, Antitrust Division, Department of Justice, Room 10-407, 555 4th Street, NW., Washington, DC 20001 (202/724-6694).

Dated: February 27, 1987.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

John Schmoll, Peter H. Goldberg, Joseph Allen, Antitrust Division, Litigation I Section, Judiciary Center Building, Rm. 10-814, U.S. Department of Justice, 555 4th Street, NW., Washington, D.C. 20001, Telephone: (202) 724-5780.

Attorneys for the United States.

(See signature page for listing of Defense Counsel)

United States District Court for the Northern District of California

United States of America, Plaintiff, v. Domtar Inc.; Domtar Industries, Inc.; Domtar Gypsum America, Inc.; The Flintkote Company, Inc.; and Genstar Gypsum Products Company, Defendants.

Civil Action No. C87-0689 RFP

Filed: February 25, 1987

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

(1) The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the defendants and by filing that notice with the Court.

(2) The parties shall abide by and comply with the provisions of the Final Judgment pending entry of the Final Judgment.

(3) In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation will be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

For the Plaintiff:

Charles F. Rule,

Acting Assistant Attorney General

Roger B. Andewelt,

Judy Whalley,

Attorneys, Antitrust Division, U.S.

Department of Justice, 555 4th Street, NW.,

Washington, DC 20001, (202) 724-5708.

For the Defendants Domtar Inc.; Domtar

Industries, Inc.; and Domtar Gypsum

America, Inc.;

Covington & Burling

By: _____

A Member of The Firm, 1201 Pennsylvania Avenue, NW., Washington, DC 20004, 202/662-6000

McCutchen, Doyle, Brown & Enersen

By: _____

A Member of The Firm, Three Embarcadero Center, San Francisco, California, 415/393-2000

For the Defendants the Flintkote Company, Inc.; and Genstar Gypsum Products Company;

Shearman & Sterling

By: _____

A Member of The Firm, 53 Wall Street, New York, New York 10005, 212/483-1000

Sullivan & Cromwell

By: _____

A Member of The Firm, 125 Broad Street, New York, New York 10004, 212/558-4000

United States of America, Plaintiff, v.

Domtar Inc.; Domtar Industries, Inc.; Domtar

Gypsum America, Inc.; The Flintkote

Company, Inc.; and Genstar Gypsum

Products Company, Defendants.

Civil Action No. C87-0689 RFP

Filed: February 25, 1987

Final Judgment

Whereas, plaintiff, United States of America, having filed its Complaint herein on February 25, 1987 and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And Whereas, the defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, prompt and certain divestiture is the essence of this agreement and the defendants have represented to the plaintiff that the divestiture required below can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

As used in this Final Judgment:

A. "Defendants" means Domtar Inc.; Domtar Industries, Inc.; Domtar Gypsum America, Inc.; The Flintkote Company, Inc.; and Genstar Gypsum Products Company, each division, subsidiary or affiliate of any of them, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them.

B. "Domtar" means Domtar Inc.; Domtar Industries, Inc.; Domtar Gypsum America, Inc.; and Genstar Gypsum Products Company, each division, subsidiary or affiliate of any of them, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them.

C. "Gypsum board" means material that consists primarily of a solid, flat core of processed gypsum between two sheets of paper surfacing, and which is used principally for constructing interior walls and ceilings of commercial and residential buildings.

D. "Pacific Southwest Operations" means the gypsum board plant and gypsum quarry, real property, capital equipment, and any other interests, assets or improvements owned by Genstar Gypsum Products Company, located in or near Las Vegas, Nevada; that company's sales and marketing organization in California, Arizona and Nevada; and that company's warehouse and sales office in Vernon, California. The assets of the Pacific Southwest Operations, as they currently exist, are generally described in Schedule A of the Stipulated Hold Separate Order which is attached hereto as Attachment I and incorporated by reference in Section IX of this Final Judgment.

E. "Person" means any natural person, corporation, association, firm, partnership or other business or legal entity.

III

A. The provisions of this Final Judgment shall apply to the defendants, their successors and assigns and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

IV

A. Domtar is hereby ordered and directed to divest all of its direct and indirect ownership in and control over the Pacific Southwest Operations within six (6) months of the date of filing of this Final Judgment, but in no event later than September 1, 1987.

B. Unless plaintiff otherwise consents, divestiture of the Pacific Southwest Operations shall be accomplished in such a way as to satisfy plaintiff that, as of the time

of divestiture, the Pacific Southwest Operations can and will be operated by the purchaser or purchasers as a viable, on-going business engaged in the manufacture and sale of gypsum board. Divestiture shall be made to a purchaser or purchasers for whom it shall be demonstrated to the plaintiff that (i) the purchase is for the purpose of competing effectively in the manufacture and sale of gypsum board, and (ii) the purchaser or purchasers have the managerial, operational and financial capability to compete effectively in the manufacture and sale of gypsum board. Nothing in this Final Judgment shall preclude plaintiff from approving a divestiture by means of a "spin-off," "leveraged buy-out," or public offering.

C. In accomplishing the divestiture ordered by this Final Judgment, Domtar promptly shall make known in the United States, by usual and customary means, the availability of the Pacific Southwest Operations for sale as an on-going business. Domtar shall notify any person making an inquiry regarding the possible purchase of the Pacific Southwest Operations that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Domtar shall also furnish to all bona fide prospective purchasers who so request, subject to customary confidentiality assurances, all pertinent information regarding the Pacific Southwest Operations. Domtar shall provide such information to the plaintiff at the same time that it furnishes such information to any other person. Domtar shall permit such prospective purchasers to make such inspection of the facility and of all financial, operations, or other documents and information as may be relevant to the sale of the facility.

D. Domtar agrees to take all reasonable steps to accomplish quickly said divestiture.

V

A. If Domtar has not accomplished the divestiture required by Section IV of this Final Judgment by September 1, 1987, the Court shall, upon application of plaintiff, appoint a trustee to effect the divestiture. Such appointment shall become effective on September 1, 1987 or as soon thereafter as the Court appoints the trustee. After the trustee's appointment becomes effective, only the trustee, and not Domtar, shall have the right to sell the Pacific Southwest Operations. The trustee shall be a business broker or a member of the investment banking community with experience and expertise in acquisitions and divestitures. The trustee shall have the power and authority to accomplish the divestiture at such price and on such terms as are then obtainable upon a reasonable effort by the trustee, to a purchaser acceptable to the plaintiff, subject to the provisions of Section VI of this Final Judgment. The trustee shall have such other powers as the Court deems appropriate. Defendants shall use all reasonable efforts to assist the trustee in accomplishing the required divestiture. Defendants shall not object to a sale by the trustee on any grounds other than malfeasance. Any such objection by the defendants must be conveyed in writing to the plaintiff and the trustee within fifteen (15) days after the trustee has notified the defendants of the proposed sale.

B. If Domtar has not divested all of its ownership interest in the Pacific Southwest Operations by July 1, 1987, Domtar shall notify plaintiff of that fact. If Domtar still has not divested all of its ownership interest in the Pacific Southwest Operations within ten (10) days thereafter, the plaintiff shall provide Domtar with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. Domtar will notify plaintiff within ten (10) days thereafter whether either or both of such nominees are acceptable. If either or both of such nominees are acceptable to Domtar, plaintiff shall notify the Court of the person or persons upon whom the parties have agreed and the Court shall appoint one of the nominees as the trustee. If neither of such nominees is acceptable to Domtar, it shall furnish to the plaintiff, within ten (10) days after the plaintiff provides the names of its nominees, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. Plaintiff shall furnish the Court the names and qualifications of its proposed nominees and the names and qualifications of the nominees proposed by Domtar. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

C. The trustee shall serve at the cost and expense of Domtar, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from a sale of the Pacific Southwest Operations and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees and expenses for its services, all remaining monies shall be paid to Domtar, and the trust shall be terminated. The compensation of such trustee shall be based on a fee arrangement providing the trustee with an incentive to accomplish the required divestiture quickly at the best price and terms reasonably obtainable.

D. The trustee shall have full and complete access to the personnel, books, records and facilities of the defendants relevant to the business or assets to be divested, and the defendants shall develop such financial or other information relevant to the business or assets to be divested as the trustee may request. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the plaintiff and Domtar setting forth the trustee's efforts to accomplish divestiture as contemplated under this Final Judgment. The reports shall include, but not be limited to, the name, address and telephone number of each person who has contacted, or who offered or expressed an interest or desire to acquire any ownership interest in the Pacific Southwest Operations, together with full details of such contact or interest. If the trustee has not accomplished such divestiture within six (6) months after the trustee's appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture,

(2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. The trustee shall at the same time furnish such report to the plaintiff and Domtar, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which shall, if necessary, include extending the term of the trust and the term of the trustee's appointment.

VII

At least thirty (30) days prior to the scheduled closing date of any proposed divestiture pursuant to Section IV or V of this Final Judgment, Domtar or the trustee, whichever is then responsible for effecting the divestiture required by this Final Judgment, shall notify the plaintiff of the proposed divestiture. If a trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and for each person not previously identified who offered or expressed an interest or desire to acquire any ownership interest in the Pacific Southwest Operations, the name, address, and telephone number of that person together with full details of that person's interest or desire to acquire such ownership interest. Within fifteen (15) days after receipt of notice of the proposed divestiture, the plaintiff may request from the defendants and the proposed purchaser additional information concerning the proposed divestiture. Defendants and the proposed purchaser shall furnish the additional information requested from them within fifteen (15) days of the receipt of the request, unless plaintiff shall agree to extend the time. Until plaintiff certifies in writing that it is satisfied that defendants and the proposed purchaser have provided the additional information requested from them, the divestiture shall not be consummated. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information from defendants and the proposed purchaser, whichever is later, unless defendants shall agree to extend the time, plaintiff shall notify defendants and the trustee, if there is one, in writing, if it objects to the proposed divestiture. If plaintiff fails to object within the period specified, or if plaintiff notifies defendants and the trustee, if there is one, in writing, that it does not object, the divestiture may be consummated, subject only to defendants' right to object to the sale under Section V.A. Upon objection by the plaintiff, a divestiture proposed under Section IV shall not be consummated. Upon objection by the plaintiff, a divestiture proposed under Section V shall not be consummated unless approved by the Court. Upon objection by defendants under Section V.A., the proposed divestiture shall not be consummated unless approved by the Court.

VII

Domtar shall not finance all or any part of the purchase of the Pacific Southwest Operations pursuant to the divestiture

required by Section IV or V of this Final Judgment without plaintiff's permission.

VIII

Thirty (30) days from the date of filing of the Complaint in this civil action and every thirty (30) days thereafter until the divestiture required by Section IV or V has been completed, Domtar shall submit in writing to the plaintiff a verified written report setting forth in detail the fact and manner of compliance with Section IV or V, as the case may be, of this Final Judgment. Each such report of compliance with Section IV shall include, for each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in the Pacific Southwest Operations, the name, address, and telephone number of that person and a detailed description of each contact with that person during that period. Domtar shall maintain full records of all efforts made to divest the Pacific Southwest Operations.

IX

The terms of the Stipulated Hold Separate Order entered into by the plaintiff and the defendants, filed with the Court, and attached hereto as Attachment I, are incorporated herein by reference.

X

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal offices, be permitted:

(1) Access during office hours of that defendant to inspect any copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of that defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of that defendant and without restraint or interference from them, to interview officers, employees and agents of that defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to any defendant's principal office, that defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section X shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of

securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceedings (other than a grand jury proceeding).

Jurisdiction is retained by this Court for the purpose of enabling plaintiff and the defendants to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII

This Final Judgment will expire on the third anniversary of the completion of the divestiture required herein.

XIII

Entry of this Final Judgment is in the public interest.

United States District Judge

Dated:
John Schmoll, Peter H. Goldberg, Joseph Allen, Antitrust Division, U.S. Department of Justice, Judiciary Center Building, Rm. 10-614, 555 4th Street, NW., Washington, DC 20001, Telephone: (202) 724-5780, Attorneys for the United States.

United States of America, Plaintiff, v. Domtar Inc.; Domtar Industries, Inc.; Domtar Gypsum America, Inc.; The Flintkote Company, Inc.; and Genstar Gypsum Products Company, Defendants.

Civil Action No. C87-0689 RFP.

Filed: February 25, 1987.

Competitive Impact Statement

The United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I.

Nature and Purpose of the Proceeding

On February 25, 1987, the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, 15 U.S.C. 25, challenging the acquisition of Genstar Gypsum Products Company ("Genstar Gypsum") by Domtar Industries, Inc. ("DII"), as a violation of section 7 of the Clayton Act, 15 U.S.C. 18. Prior to the acquisition, Genstar Gypsum was a wholly owned indirect subsidiary of The Flintkote Company, Inc. ("Flintkote"). Flintkote is a wholly owned

indirect subsidiary of Imasco Enterprises, Inc. ("IEI"), which, in turn, is a wholly owned subsidiary of Imasco Limited ("Imasco"). DII is a wholly owned subsidiary of Domtar Inc. ("Domtar"). The complaint names as defendants Domtar, DII, Domtar Gypsum America, Inc. ("DGAI"), a wholly owned subsidiary of DII, Flintkote and Genstar Gypsum. The complaint alleges that the effect of the merger may be substantially to lessen competition in the manufacture and sale of gypsum board in the Pacific Southwest market. As defined in the complaint, the Pacific Southwest market consists of the southern portion of the state of California, the southern portion of the state of Nevada and the state of Arizona.

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the government withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations thereof.

II.

Events Giving Rise to the Alleged Violation

Under the terms of a Stock Purchase Agreement dated October 10, 1986, Domtar proposes to acquire all of the stock of Genstar Gypsum from Flintkote. Domtar will be free to consummate the acquisition after midnight February 25, 1987. Domtar, through its subsidiaries, competes with Genstar Gypsum in the manufacture and sale of gypsum board in the Pacific Southwest market, and elsewhere. In the Pacific Southwest market, Domtar, through DGAI, operates a gypsum board plant in Long Beach, California, and Genstar Gypsum operates a gypsum board plant in Las Vegas, Nevada.

Gypsum board is material that consists primarily of a solid, flat core of processed gypsum between two sheets of paper surfacing. It is used principally for constructing interior walls and ceilings in commercial and residential buildings.

The complaint alleges that the sale by manufacturers of gypsum board constitutes a line of commerce, or relevant product market, for antitrust purpose, and that the Pacific Southwest market constitutes a section of the country, or relevant geographic market. Within this geographic area, the complaint alleges the effect of the merger may be substantially to lessen competition in the manufacture and sale of gypsum board.

Gypsum board consumers located in the Pacific Southwest market historically have been served almost exclusively by gypsum board manufacturing plants located in that market. Demand for gypsum board in the Pacific Southwest market is currently high. Prices have increased by approximately 44 percent since 1983, and most or all of the gypsum board manufacturing plants located in the market are operating at or near full capacity. Even at the cyclically high prices at which gypsum board currently is being sold in the Pacific Southwest market, only three manufacturers whose plants are located outside of that market have been selling significant amounts of gypsum board into the

market. Two of these firms are located in New Mexico: Centex American Gypsum Co., Inc. ("Centex"), Albuquerque, New Mexico, and Western Gypsum Co. Inc. ("Western"), Santa Fe, New Mexico. When demand slackens, and prices in the market decline, neither these nor other firms will be able profitably to sell gypsum board in the market from plants located outside of the market. The third firm is Georgia Pacific Corporation ("Georgia Pacific"). Georgia Pacific has recently been shipping gypsum board into the Pacific Southwest market from plants outside the market but only in anticipation of constructing a plant in the market in Las Vegas, Nevada beginning in 1987. Upon completion of the Las Vegas plant, Georgia Pacific is expected to cease shipments from outside the market.

The Sale by manufacturers of gypsum board in the Pacific Southwest market is highly concentrated. Domtar is the fifth largest firm in the Pacific Southwest market with a market share of approximately 11.0 percent, while Genstar Gypsum is the sixth largest firm with a market share of approximately 10.9 percent, as measured by total manufacturing capacity of the gypsum board plants located within the Pacific Southwest market and the Centex and Western plants, and the anticipated capacity of the Georgia Pacific plant identified above. If Domtar were to acquire Genstar Gypsum, it would become the second largest firm in the Pacific Southwest market with a market share of 21.9 percent. The Herfindahl-Hirschman Index, and measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers, would increase 240 points to 1747.

III

Explanation of the Proposed Final Judgment

The proposed Final Judgment requires that Domtar, including its subsidiaries, divest its entire interest in Genstar Gypsum's Pacific Southwest Operations, consisting of Genstar Gypsum's Las Vegas gypsum board plant and gypsum quarry, its sales and marketing organization in California, Arizona and Nevada, and its warehouse and sales office in Vernon, California. The divestiture is to be absolute and unconditional and to occur within six months of the filing of the Final Judgment. If Domtar cannot accomplish the required divestiture within the above period, the proposed Final Judgment provides that, upon application by the plaintiff, the Court shall appoint a trustee to sell the Pacific Southwest Operations.

The Pacific Southwest Operations must be divested to a purchaser or purchasers who can and will operate them as a viable, ongoing business that can compete effectively in the relevant market. Domtar will take all reasonable steps necessary to accomplish divestiture and shall cooperate with bona fide prospective purchasers and the trustee.

Coincident with entering into the proposed Final Judgment, defendants have agreed to a Stipulated Hold Separate Order requiring that they maintain the Pacific Southwest Operations as an independent, viable business with its assets, management and

operations separate, distinct and apart from Domtar's operations, until the mandated divestiture has been accomplished. The Stipulated Hold Separate Order is incorporated by reference in the proposed Final Judgment.

Under the terms of the Stipulated Hold Separate Order, until the Pacific Southwest Operations are divested, they shall be managed by, William E. Nilson, a general manager appointed by Domtar and approved by plaintiff. The general manager shall have complete managerial responsibility for the Pacific Southwest Operations, subject to the provisions of the proposed Final Judgment and the Stipulated Hold Separate Order. Other than to assure compliance with the proposed Final Judgment and as expressly permitted by the Stipulated Hold Separate Order, the general manager shall not consult with Domtar or its subsidiaries with respect to the management of the Pacific Southwest Operations. Further, Domtar and its subsidiaries shall not influence or attempt to influence, directly or indirectly, any operational or financial decisions of the Pacific Southwest Operations.

If a trustee is appointed, the proposed Final Judgment provides that Domtar will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee to accomplish the divestiture as quickly as possible and at the best price and terms reasonably obtainable. If after six months from the date of the trustee's appointment the required divestiture has not been accomplished, the trustee, and the defendants, if they elect to, shall make recommendations to the Court and the Court shall enter such orders as it deems appropriate to effect divestiture.

The divestiture of the Pacific Southwest Operations will maintain those operations as a significant independent competitor in the Pacific Southwest market and eliminate the adverse effect on competition in that market alleged in the complaint.

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the APPA. The proposed Final Judgment constitutes no admission by any party as to any issue of fact or law. Under the provisions of Section 2(e) of the APPA, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Final Judgment is in the public interest.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys fees. Entry of the Final Judgment will neither impair nor assist the bringing of any private antitrust damage actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the Final Judgment has no *prima facie* effect in any

private lawsuit that may be brought against the defendants.

V

Procedures Available for Modification of the Proposed Final Judgment

As provided by the APPA, any person wishing to comment upon the Final Judgment may, within the statutory 60-day comment period, submit written comments to Anthony V. Nanni, Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice, 555 4th Street, NW., Washington, DC 20001. These comments and the Department's responses will be filed with the Court and published in the *Federal Register*. All comments will be given due consideration by the Department, which remains free to withdraw its consent to the judgment at any time prior to entry. The judgment provides that the Court retains jurisdiction over this action and any party may apply to the Court for any order necessary or appropriate for its modification, interpretation, or enforcement.

VI

Alternative to the Proposed Final Judgment

As an alternative to the proposed Final Judgment, the United States considered seeking a preliminary injunction to block Domtar's acquisition of, and merger with, Imasco's gypsum operations. The United States decided to accept the proposed Final Judgment rather than seek to enjoin the acquisition because it concluded, for the reasons stated above, that the divestiture of the Pacific Southwest Operations should maintain those operations as an independent, viable competitor in the Pacific Southwest market and prevent the merger from having any anticompetitive effect.

In this regard, the United States considered whether it was necessary to require that Genstar Gypsum's mill for manufacturing gypsum board paper in Vernon, California be divested as a part of the Pacific Southwest Operations in order to make them a viable business. The United States decided that such additional divestiture was unnecessary. The investigation conducted by the United States disclosed that the purchaser of the Las Vegas plant will be able to obtain gypsum board paper from a number of alternative sources located both inside and outside of the Pacific Southwest market, including both other gypsum board manufacturers as well as an independent paper company.

The proposed Final Judgment achieves the objective of the lawsuit and also saves the United States the expense of litigation. The anticompetitive effect alleged in the complaint was the lessening of competition in the manufacture and sale of gypsum board in the Pacific Southwest market. In other parts of the country, the merger will be, at worst, competitively neutral. The required divestiture will preserve competition in the Pacific Southwest market. Thus, the United States believes that entry of the proposed Final Judgment is in the public interest.

VII

Determinative Materials and Documents

There are no materials or documents that the United States considered to be

determinative in formulating this proposed Final Judgment. Accordingly, none are being filed with this Competitive Impact Statement.

Respectfully submitted,

John Schmoll,
Peter H. Goldberg,
Joseph Allen

Attorneys, United States Department of Justice.

John Schmoll, Peter H. Goldberg, Joseph Allen, Antitrust Division, U.S. Department of Justice, Judiciary Center Building, Rm. 10-814, 555 4th Street, NW., Washington, DC 20001, Telephone: (202) 724-5780, Attorneys for the United States. (See signature page for listing of Defense Counsel.)

United States of America, Plaintiff, v. Domtar Inc.; Domtar Industries, Inc.; Domtar Gypsum America, Inc.; The Flintkote Company, Inc.; and Genstar Gypsum Products Company, Defendants.

Civil Action No. C87-0689-RFP.

Filed: February 25, 1987.

Stipulated Hold Separate Order

It is hereby Ordered That:

1. As used in this Order:

(a) "Domtar" means defendant Domtar Inc., each subsidiary, division or affiliate thereof, and each officer, director, employee, agent, or other person acting for or on behalf of any of them. After Domtar acquires Genstar Gypsum, Domtar includes Genstar Gypsum but does not include its Pacific Southwest Operations.

(b) "Genstar Gypsum" means defendant Genstar Gypsum Products Company, each subsidiary, division or affiliate thereof, and each officer, director, employee, agent, or other person acting for or on behalf of any of them.

(c) "Flintkote" means The Flintkote Company, Inc., each subsidiary, division, affiliate or parent thereof, and each officer, director, employee, agent, or other person acting for or on behalf of any of them.

(d) "The Pacific Southwest Operations" means Genstar Gypsum's Las Vegas, Nevada gypsum board plant (individually referred to as "the Plant") and its associated quarry and sales and marketing organizations in California, Arizona and Nevada, all as more specifically described in Schedule A hereto. The Pacific Southwest Operations includes all of Flintkote's and Genstar Gypsum's rights and obligations under all agreements between Flintkote and/or Genstar Gypsum, on the one hand, and any third party or parties, on the other hand, relating to the business of the Plant and the associated quarry and sales and marketing organizations.

2. Until the divestiture required by the proposed Final Judgment in this action has been accomplished, Domtar shall:

(a) Take all steps necessary to assure that the Pacific Southwest Operations will be maintained as a separate and independently viable operating business with its assets, management and operations separate, distinct, and apart from those of Domtar;

(b) Take all steps necessary to assure that the Pacific Southwest Operations will be continued as an economically viable on-going business;

(c) Refrain from taking any action that would jeopardize the sale or operation of the Pacific Southwest Operations or otherwise adversely affect its capability to compete effectively in the production and sale of gypsum board;

(d) Take no action, directly or indirectly, which would cause any change or alteration to be made in the Pacific Southwest Operations, other than as may be necessary to comply with any other provision of this order, except that Domtar shall appoint David Bosley as a financial consultant to act as comptroller to the Pacific Southwest Operations and, pursuant to Section 3 of this order, shall appoint William E. Nilson as General Manager to manage the Pacific Southwest Operations.

(e) Neither cause nor permit the management of the Pacific Southwest Operations to use the Domtar name or any of its trademarks or identify the relationship between Domtar and the Pacific Southwest Operations in any advertising, sales or promotional activities pertaining to products manufactured at the Plant. Flintkote shall permit the use of Flintkote or Genstar trademarks presently being used in the sale of gypsum products by the Pacific Southwest Operations until such time as the Pacific Southwest Operations are divested. Until such time, Domtar shall not cause any change in the identification of products manufactured at the Plant, including identifications on bills of lading, invoices or similar documents;

(f) Provide and maintain sufficient working capital to maintain the Pacific Southwest Operations as a viable on-going business, including but not limited to the establishment of a line of credit of not less than \$3 million for the exclusive use of the Pacific Southwest Operations, irrevocable until such time as those operations are divested;

(g) Maintain normal repair and maintenance schedules at the Plant;

(h) Provide for all necessary capital improvements, including but not limited to those set forth in Schedule B hereto. Capital expenditures over \$100,000 per item, other than those provided in Schedule B hereto, shall require the prior written approval of the Chief Financial Officer of Domtar Inc., provided that such approval shall not be unreasonably refused;

(i) Contract with an independent accounting firm to maintain on behalf of the Pacific Southwest Operations, in accordance with sound accounting practice, separate, true and complete financial ledgers, books and records reporting the profit and loss and assets and liabilities of the Pacific Southwest Operations on a monthly and quarterly basis; and

(j) Refrain from causing or permitting any commingling of the assets of the Pacific Southwest Operations, other than assets relating to pension plans, with those of Domtar or those of any other Genstar Gypsum plant or facility acquired.

3. Until such time that the Pacific Southwest Operations are divested, they shall be managed by William E. Nilson, General Manager, who has been appointed by Domtar and approved by the plaintiff.

Domtar shall execute and perform all terms and conditions of the Employment Contract ("Employment Contract") entered into between Domtar and William E. Nilson, which is incorporated by reference herein and attached hereto as Schedule C. Domtar shall not in any way modify the Employment Contract without plaintiff's prior approval. The General Manager shall have complete managerial responsibility for the Pacific Southwest Operations, subject to the provisions of this Order and the proposed Final Judgment. In the event that William E. Nilson is unable to perform his duties as General Manager under the Employment Contract because of death, incapacity, termination for cause, or any other reason, Domtar shall appoint, subject to plaintiff's approval, a new General Manager within ten (10) working days. Should Domtar fail to appoint a General Manager acceptable to plaintiff within ten (10) working days, plaintiff shall appoint, subject to the Court's approval, the General Manager. Other than as permitted by Section 4 of this Order and as is necessary to assure compliance with this Order or the proposed Final Judgment, the General Manager shall not consult with Domtar without prior permission of plaintiff.

4. Domtar shall not influence or attempt to influence, directly or indirectly, any operational or financial decisions of the Pacific Southwest Operations, and shall not obtain, directly or indirectly, from the Pacific Southwest Operations, or any of its officers, employees, attorneys, agents or any other person acting for or on behalf of any of them, any information, except as follows: (a) The independent accounting firm described in Section 2(i), above, shall consult with Domtar's outside counsel concerning any accounting irregularity or other financial problem identified during its monthly and quarterly audit and, after obtaining prior approval of the plaintiff, such firm and/or outside counsel may communicate with Domtar concerning the problem and any possible remedial action; (b) information concerning the financial condition and performance of the Pacific Southwest Operations that is reasonably necessary for Domtar to comply with the provisions of the proposed Final Judgment shall be disclosed only to Domtar's Director of Corporate Business Development, Legal Department and any bank, broker or investment banker retained to assist in the sale, provided that such information shall not be further disclosed within Domtar without the prior permission of plaintiff; (c) in seeking approval pursuant to Section 2(h), above, of capital expenditures exceeding \$100,000 per item, the General Manager shall communicate directly to the Chief Financial Officer of Domtar Inc. such information as may be necessary to justify the proposed expenditure, provided that such information will not be further disclosed within Domtar without the prior permission of plaintiff; and (d) Domtar's outside counsel and/or the independent accounting firm described in Section 2(i), may supervise and receive information necessary to comply with federal, state, provincial or local environmental, securities and other regulatory laws, and to settle intercompany

accounts as provided in, and to verify those representations and warranties which survive under, the Stock Purchase Agreement; and, after obtaining prior approval of the plaintiff, the outside counsel and/or accounting firm may communicate with Domtar concerning any identified problem, possible remedial action, or reporting requirements under environmental, securities or other regulatory laws.

5. The provisions of this Order shall apply until the sale, conveyance, and transfer of all rights, title, and interests in the Pacific Southwest Operations as described in the proposed Final Judgment.

6. Nothing herein shall suggest that any portion of this Order is or has been created for the benefit of any third party and nothing herein shall be construed to create any rights in any third party.

Presented by:
For Plaintiff:

John Schmoll,

Attorney, U.S. Department of Justice.

For the Defendants Domtar Inc.; Domtar Industries, Inc.; and Domtar Gypsum America, Inc.:

Covington & Burling

By:

A Member of The Firm, 1201 Pennsylvania Avenue, NW., Washington, DC 20044, 202/622-6000

McCutchen, Doyle, Brown & Enersen

By:

A Member of the Firm, Three Embarcadero Center, San Francisco, California, 415/393-2000

For the Defendants The Flintkote Company, Inc. and Genstar Gypsum Products Company:

Shearman & Sterling

By:

A Member of The Firm, 53 Wall Street, New York, New York 10005, 212/483-1000
Sullivan & Cromwell

By:

A Member of The Firm, 125 Broad Street, New York, New York 10004, 212/558-4000

It is so Ordered:

Dated:

United States District Judge.

[FR Doc. 87-4873 Filed 3-8-87; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 13, 1986, Knoll Pharmaceuticals, 30 North Jefferson Road, Whippany, New Jersey 07981, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than April 8, 1987.

Dated: February 27, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-4875 Filed 3-6-87; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application; Analytical Systems, Div. of Marion Laboratories, Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 19, 1987, Analytical Systems, Division of Marion Laboratories, Inc., 2 Goodyear, Irvine, California 92718, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
Phencyclidine (7471)	II
1- piperidinocyclohexanecarboxi- trile (PPC) (8603)	II
Benzoylcegonine (9180)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator,

Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than April 8, 1987.

Dated: February 27, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-4876 Filed 3-6-87; 8:45 am]

BILLING CODE 4410-09-M

Office of Justice Programs

The President's Child Safety Partnership; Meeting

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given of an upcoming meeting of the President's Child Safety Partnership (hereinafter referred to as the Partnership). Date: March 23-24, 1987 at the Hyatt Regency New Orleans, Poydras at Loyola Ave., New Orleans, Louisiana. The purpose of the meeting is to discuss the final report of the Partnership.

SUPPLEMENTARY INFORMATION: The Partnership, which was established by the President on April 29, 1985, consists of twenty-six members from the public, private (both corporate and nonprofit), state and local, and Federal sectors, and includes a wide range of expertise in fields related to child safety. The Partnership functions solely as an advisory committee under the provisions of the Federal Advisory Committee Act.

The Partnership will make recommendations to the President for the prevention of victimization and the promotion of the safety of America's children, and will also encourage the development of public/private sector initiatives to prevent and respond to the victimization of children. The scope of the Partnership's recommendations will be concerned with a broad range of offenses against children, specifically: child physical abuse, neglect, sexual molestation and abuse, parental and stranger abduction, runaway youth, sexual exploitation, theft, assault, and drug abuse.

Conduct of the Meeting

The meeting, which will be open to the public, will be held from 9:00 a.m. to 5:00 p.m. on March 23rd, and from 9:00 a.m. to 1:00 p.m. on March 24th. The Chairman of the Partnership, Mr. William McConnell will preside at the

meeting. The entire meeting will be devoted to discussing recommendations the Partnership is to make to the President as part of its final report. The report is based upon information received in seven previous hearings held across the country and in written testimony received by the Partnership. Approximately twenty-five seats will be available for the public on a first-come, first-serve basis. The agenda will be available at the meeting.

FOR FURTHER INFORMATION CONTACT: William Modzeleski, Chief, National Victims Initiatives, Office for Victims of Crime, Office of Justice Programs, Washington, DC 20531. (Tel: 202-272-6500).

Richard B. Abell,

Acting Assistant Attorney General, Office of Justice Programs.

[FR Doc. 87-5010 Filed 3-6-87; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 87-24; Exemption Application No. D-6593 et al.]

Grant of Individual Exemptions; Barkus & Kronstadt D.O., P.A. Defined Benefit Pension Plan (the Plan) et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the *Federal Register* of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied

with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Barkus & Kronstadt D.O., P.A. Defined Benefit Pension Plan (the Plan) Located in Miami, Florida

[Prohibited Transaction Exemption 87-24; Exemption Application No. D-6593]

Exemption

The restrictions of section 408(a) and 408(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Plan of certain real property (the Property) to Miriam R. Barkus, a party in interest with respect to the Plan, provided that the sales price is no less than the greater of the fair market value of the Property as of the date of sale or the total expenses to the Plan in connection with the acquisition and holding of the Property.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 18, 1986 at 51 FR 41704.

FOR FURTHER INFORMATION CONTACT: Joseph L. Roberts III of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

**Texas Instruments Incorporated
Employees Pension Plan (the Plan)
located in Dallas, Texas**

[Prohibited Transaction Exemption 87-25;
Exemption Application No. D-6791]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of certain real property by Texas Instruments Incorporated (TI), the Plan sponsor, to the Plan, and the leaseback of that property to TI, provided that all the terms of the sale and leaseback were as favorable to the Plan, as those obtainable in an arm's-length transaction with an unrelated party on the dates the transactions were consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption (the Notice) published on November 21, 1986 at 51 FR 42146.

EFFECTIVE DATE: December 31, 1986.

Clarification: The Notice inadvertently stated that TI would retain ownership of an office and radar testing building (the Tower) located on approximately 115.7 acres of commercial property located in Plano, Texas (the Property) and will arrange and pay all associated costs for removal of the Tower from the Property at such time as TI ceases to lease the Property. In fact, TI will not remove the Tower nor retain ownership of the Tower. TI, however, will remove and pay all associated expenses from removal of certain radar tower antennae apparatuses erected at various places on the Property.

Written Comments: The Department received 19 comments to the proposed exemption and no requests for a public hearing. Fourteen of the written comments received were identical. These comment letters stated that the commentors were concerned about the proposed exemption and requested that the proposed exemption not be granted. However, these commentors did not give substantive reasons for their objections to the granting of the proposed exemption. In response, the Plan's independent fiduciary, Texas American Bank (the Bank) stated that it was unable to address these comments because no reasons for objection were given.

The Five other comments raised several areas of concern involving the proposed transactions. These objections

include: (a) That TI was engaged in cost cutting and wanted to "unload" the Property to the Plan thereby receiving a huge capital gains profit; (b) the use of Plan assets as a source of capital for TI resulting in a raid upon the Plan which would create a hardship for the Plan and its participants; (c) the concern that the resale of the Property after the expiration of the lease will not compare with the profits the Plan could be making in other investments over the same term as the lease; (d) a severe depression in the value of real estate in Texas causing appraised values to have little meaning; and (e) the possibility of the Plan owning unmarketable real estate at the end of the lease term.

The Bank addressed the above concerns as follows:

The transaction does not constitute cost cutting by TI so that the Property could be unloaded to the Plan at a substantial profit, nor does the sale of the Property to the Plan constitute a raid upon the Plan. The Bank stated rather that the current acquisition price of the Property is not unreasonable in light of the prime location and economic development currently under way in the Dallas market area. Furthermore, the Bank stated that the valuation of the Property is amply supported by an independent appraisal which fully reflects the current economic environment in Dallas. In addition, the Bank stated that the transactions are a reasonable and prudent investment involving 5% of the total plan portfolio. The Bank believes therefore, that the Plan is adequately positioned to provide the cash flow necessary to pay benefits both now and in the future. Additionally, the Bank stated that the rental rate of 10% will be in excess of the fair market rental rate for the contemplated use by TI and, based upon this determination, would exceed the rate that TI would normally pay a third party.

With respect to the commentor's concern regarding this investment compared to other investments, the Bank stated that the income stream of 10% of capital invested is superior to alternative investments at this time. Furthermore, the Bank represented that a pension plan should diversify investments in order to reduce risk and volatility in a retirement plan's portfolio and that the allocation of these pension monies to this real estate investment will result in less than 10 percent of the Plan's assets being held in real estate.

The Bank noted that historical market returns demonstrate that real estate is a desirable asset from the point of view of diversification. It provides characteristics that distinguish it from

both stocks and bonds. Adding that Property to the Plan's investment portfolio will provide further fundamental diversification. The Bank also noted that real estate investment historically provides protection against inflation.

With respect to the commentor's concern regarding the validity of appraisals in a depressed real estate market, the Bank represented that it believes the Property is an attractive investment for the plan which should produce above average returns for the Plan participants and beneficiaries over a reasonable period of time. The Bank also noted that a second appraisal was performed on the Property by a qualified independent real estate appraiser, H.W. Dunham & Associates (Dunham) on December 12, 1986. Dunham valued the Property as of that date at \$34,300,000.¹ The Bank stated that Dunham used a conservative evaluation approach which fully reflects the current economic environment in Texas and that it concurs with the opinion of Dunham that recent occurrences, such as the construction of a new state highway, upgraded zoning, and the development in the area of the Property of two major retailers, enhance the long term value of the Property. Accordingly, the Bank represented that it believes that Dunham's appraisals reflects current economic conditions in the Dallas area and are valid evaluations of the Property's worth.

With regard to the commentor's concern about the Plan owning unmarketable real estate at the end of the lease term, TI, in an effort to further protect the Plan's interest with respect to the subject transaction, has decided to provide an additional safeguard to the Plan.² Specifically, TI has offered the following as an additional protection to the Plan:

At the Plan's option, TI will pay the Plan, upon expiration of the lease, the excess, if any, of the Plan's purchase price for the Property over the lower of:

¹ The original appraisal was made by Dunham and valued the Property at \$37,300,000. The Plan, however, will purchase the Property for \$34,300,000 reflecting the value of the most recent appraisal.

² The Notice in relevant part provided that: "Upon termination of the lease (whether at the expiration of the lease term, or upon early termination of the lease by the Plan), the fair market value of the property will be determined by an independent appraisal. If the fair market value of the Property is less than the Plan's acquisition cost of \$37.3 million, TI will make a cash payment to the Plan in the amount by which the fair market value of the Property at the time of the termination of the lease is below the Plan's cost for the purchase of the Property from TI."

(a) The appraised value of the Property upon expiration of the lease, or

(b) The highest bona fide cash purchase offer which the Plan has received for the Property from a third party and which is outstanding upon expiration of the lease (following use of the Plan's best efforts to market the Property and obtain the highest possible cash purchase offers during the 12-month period prior to the expiration of the lease). If the Plan exercises the option for alternative (b), TI will have the right of first refusal to purchase the Property at the price established by the offer described in (b). TI has furnished the following detailed explanation of the added protection:

The Bank, acting on behalf of the Plan, will have complete flexibility in determining whether to obtain an appraisal and cash purchase offers from third parties and submit them to TI. The Bank may decide not to obtain or submit these items to TI in the event it becomes clear that the Property's value has increased beyond the point where any payment would be required or if better opportunities arise during the lease term. If the Bank decides not to do so, the lease would terminate in accordance with the lease provisions and TI would vacate the premises and perform the personal property removal and restoration that it has committed in the lease to perform.

The Bank also may obtain either an appraisal or cash offers, or both, for purposes of evaluating the best course of action and will have no obligation to submit them to TI if it determines not to request payment from TI. It can submit either the appraisal or the highest cash offer to TI and require TI to make its payment upon the basis of the one submitted. On the other hand, it can submit both to TI and require TI to make its payment on the basis of the lower of the two.

If the Bank desires to invoke its right to payment from TI without giving TI the right of first refusal to purchase the Property, it may obtain an appraisal from an independent qualified appraiser as to fair market value within sixty days prior to the termination of the lease, and require TI to make payment based only upon the appraisal. In such case TI would not have the right of first refusal to purchase the Property, but would make the payment in the amount of the excess, if any, of the Plan's purchase price over the appraised value.

If the Bank desires to invoke its right to receive payment from TI based upon cash offers, however, it will be required to use its best efforts to obtain cash purchase offers from third parties. This would include placing the Property on

the market twelve months in advance of the lease termination date, advertising through brokers and other available means, and taking such actions as a reasonable seller would ordinarily take to stimulate interest in the Property and encourage the best possible offers.

The cash offer upon which TI's payment is to be based will need to be accompanied by a good faith deposit of a portion of the purchase price in cash or letter of credit, be open to acceptance by the Bank at the time the TI payment is to be made, be from a purchaser who is qualified to purchase the Property and has demonstrated means to finance a cash purchase, and be subject to acceptance and the closing of a purchase without conditions other than the normal actions to cure any matters which would constitute an objection to the title of the Property.

As noted above, if the Bank desires to invoke its right to payment from TI based upon the highest cash offer, TI will have the right of first refusal to purchase the Property at the same price as the highest cash offer. If TI elects to purchase the Property pursuant to its right of first refusal, TI would pay the purchase price to the Plan in addition to the required payment of any excess of the original purchase price over the highest cash offer from a third party.

The timing of the elections by the Bank to invoke its right to TI's payment and TI's election to exercise its right of first refusal is structured so that the payment or exercise will occur within a short period after termination of the lease. This will avoid the Plan being subject to an extended period after lease termination in which it may not be able to realize income from the Property or sell the Property to third parties without foregoing its opportunity to receive payment from TI.

The Bank will need to decide at least twelve months prior to lease termination whether to place the Property on the market and preserve its right to TI's payment based upon the highest cash offer, or forego such right and keep the Property off the market. Such a marketing period will be necessary to obtain realistic cash purchase offers from third parties.

The Bank also will need to obtain an appraisal of the Property within sixty days prior to the lease termination date in order to be able to exercise its right to payment promptly upon termination of the lease. Upon termination of the lease, the Bank will have thirty days to notify TI whether it desires to exercise its right to TI's payment and, if so, to furnish TI with the appraisal. If the Bank determines to exercise its right to TI's payment based upon the lower of the

appraisal or the highest cash offer, it will have to so notify TI and furnish TI the cash offer documents within the same thirty-day time period.

TI will have thirty days after receipt of the information from the Bank to notify the Bank of its election to purchase the Property at the cash offer or, if it decides not to do so, to remit the payment based upon the lower of the appraisal or the highest cash offer. If the Bank has not submitted cash offer documents to TI, then TI must remit payment based solely on the appraisal within the same thirty-day time period.

The Bank will have the flexibility to change its election with respect to either of the notifications by furnishing TI with a new notification at any time prior to TI's response during the thirty-day response period. Such new notification will extend TI's response time to thirty days after receipt of the new notification.

If TI determines to exercise the right to purchase the Property at the highest cash offer, the closing date will be within sixty days after TI notifies the Bank of such determination, subject to acceleration or extension by mutual agreement of the parties or by the time required to complete the necessary actions to close the purchase.

Examples of the manner in which the various actions would occur are set out below.

Example 1: The Bank decides, one year prior to the lease termination date, to preserve the right to exercise its option to require TI to make a payment at lease termination equal to the excess of the Plan's original purchase price over the lower of appraised value or the highest bona fide cash offer. The Bank will retain a broker to list the Property, to advertise it as being for sale and to solicit cash offers from third parties. The Bank will continue to use its best efforts to obtain cash offers until termination of the lease. If any bona fide cash offers are obtained, the Bank could elect, within thirty days after termination of the lease, to require TI to make its payment based upon the lower of the appraised value or the highest cash offer.

Example 2: The Bank's decision in example 1 is to retain the Property after termination of the lease for development, other uses, or sale to a third party, and to forego the right to require TI to make its payment based upon a bona fide cash offer. The Bank is not required to begin marketing efforts for the Property. The Bank still will be able to receive TI's payment based upon an appraisal.

Example 3: The Bank decides, sixty days prior to the lease termination date, to require TI to make a payment at least termination based upon the appraised value of the Property. The Bank must obtain an appraisal from an independent qualified appraiser prior to lease termination.

Example 4: The Bank having placed the Property on the market twelve months previously and used good faith efforts to obtain cash offers from third parties, and having obtained an appraisal within sixty days of the lease termination, decides to require TI to make its payment based upon the lower of the appraised value or the highest cash offer received. It must notify TI within thirty days of the lease termination date of this election and furnish to TI copies of the appraisal and the cash offer documents within the thirty day period. The Bank can change this election at any time within the thirty day period so long as TI has not responded to the notice. For example, if the Bank receives a higher cash offer or becomes aware of opportunities for development or lease of the Property to third parties during the thirty day period and prior to TI's response, it can notify TI that TI's payment must be equal to the excess of the Plan's original purchase price over the appraised value and not such excess over the lower of the appraised value, and the cash offer, thereby revoking TI's right of first refusal to purchase the Property.

After consideration of the entire record, including the Bank's responses to the written comments and the additional protection provided by TI, the Department has determined that the transaction would be in the best interest and protective of Plan participants and beneficiaries. Accordingly, the Department has determined to grant the exemption, as modified herein, effective December 31, 1986, the date the transactions were consummated.

For Further Information Contact: Ms. Linda M. Hamilton of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Batterymarch Financial Management (BFM) Located in Boston, Massachusetts

[Prohibited Transaction Exemption 87-26; Exemption Application No. D-6956]

Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to the direct purchase, sale or exchange of securities between any two or more clients of BFM in connection with the overall realignment of the investment portfolios of such clients, provided that all such purchases, sales or exchanges are

effected at the current market price on the date of the transactions.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 9, 1987 at 52 FR 879.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Evans Retirement Plan and Trust (the Plan) Located in New York, NY

[Prohibited Transaction Exemption 87-27; Exemption Application No. D-6968]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale of certain publicly traded securities to the Plan by James and Mary Evans (the Evans), disqualified persons with respect to the Plan provided that the terms of sale are no less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party at the time the transaction is consummated.⁵

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 9, 1987 at 52 FR 880.

For Further Information Contact: Alan Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with

⁵ Since the Evans are the only participants in the Keogh Plan there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 3rd day of March, 1987.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87-4849 Filed 3-6-87; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-6363 et al.]

Proposed Exemptions; The Longmont National Bank Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this *Federal Register* Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three

copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the *Federal Register*. Such notice shall include a copy of the notice of pendency of the exemption as published in the *Federal Register* and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

The Longmont National Bank Pension Plan (the Pension Plan); The Longmont National Bank Profit Sharing Plan (the Profit Sharing Plan) and the Harvey Potts Individual Retirement Account (the IRA) Located in Longmont, Colorado

[Application Nos. D-6363, D-6364 and D-6365]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act

and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(b)(2) of the Act shall not apply to the October 10, 1984 sale of two portions of a U.S. Treasury Note (the Note) by the IRA, one portion each to the Pension Plan and to the Profit Sharing Plan, provided such transaction was consummated at fair market value on the date of the sale.

Effective Date: If granted, this proposed exemption will be effective October 10, 1984.

Summary of Facts and Representations

1. Colorado National Bank-Longmont, N.A., formerly known as The Longmont National Bank, N.A. (the Bank) is the sponsor and trustee of the Pension Plan and the Profit Sharing Plan. In addition, the Bank is the trustee of the IRA. The Pension Plan had 23 participants, and the Profit Sharing Plan had 47 participants, both as of September 16, 1985. At the time of the subject transaction in October, 1984, the Pension Plan had approximately \$204,000 in assets, and the Profit Sharing Plan had assets of approximately \$544,000.

2. Prior to the subject transaction, the IRA owned \$10,000 of the Note, which was a \$75,000 U.S. Treasury Note (due May 15, 1985, 10 3/4% interest, QSIP No. 912827 KE). The Profit Sharing Plan held \$15,000, and the Pension Plan held \$15,000 of this pooled Note. A trust administered by the Bank held the balance of the Note.

3. In 1984, the Bank decided to computerize their individual retirement accounts. The computer system that was to be utilized by the Bank was incompatible with individual retirement accounts holding assets other than certificates of deposit.

4. As trustee of the IRA, the Bank decided to sell the IRA's portion of the Note so that the IRA could move into the computerized system. The sale took place on October 10, 1984. On that date, the market value of the Note was determined, and \$5,000 of the IRA's portion of the Note was purchased by the Profit Sharing Plan, and \$5,000 was purchased by the Pension Plan. No commissions were paid, and no expenses were incurred or allocated, as the transaction was simply a book entry shift. The fair market value of the Note was determined by taking the average between the bid and asked prices as reflected in *The Wall Street Journal* for the day of the transaction. Since the Pension Plan and the Profit Sharing Plan each owned \$15,000 of the Note, the Bank determined to split the portion of the Note purchased from the IRA in

equal shares and have each plan own an additional \$5,000 interest in the Note.

5. The Bank subsequently became aware that the transaction might have resulted in a violation of section 406(b)(2) of the Act because the Bank acted both as trustee for the IRA which sold the interest in the Note, and as trustee for the Plans which acquired the interest in the Note. Accordingly, the Bank filed the request for exemption for the subject transaction.

6. In summary, the applicant represents that the subject transaction met the criteria of section 408(a) of the Act because: (1) The transaction occurred at fair market value, as determined at the time of the transaction by reference to *The Wall Street Journal*; (2) no commissions or other expenses were paid in connection with the transaction; and (3) the acquired portion of the Note was split evenly between the Profit Sharing Plan and the Pension Plan, which had previously owned equal shares of the Note.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Tuscaloosa News, Inc. Profit Sharing Plan and Trust (the Plan) Located in Tuscaloosa, Alabama

[Application No. D-6832]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale on December 15, 1986 by the Plan of three unsecured promissory notes (The Notes) to the Tuscaloosa News Division of the New York Times Company, the sponsor of the Plan, provided that the sales price for each of the Notes was no less than the fair market value of each Note on the date of sale.

Effective Date: If the proposed exemption is granted, the exemption will be effective December 15, 1986.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with approximately 108 participants and total assets of \$958,353.54 as of December 31, 1985. The

trustee of the Plan is First Alabama Bank of Tuscaloosa, N.A. (the Trustee). The sponsoring employer is a New York corporation engaged in the newspaper publishing business in New York City, Tuscaloosa, Alabama, and other locations.

2. In 1985, the New York Times Company (The Times) purchased all of the outstanding shares of common stock of Tuscaloosa News, Inc. (Tuscaloosa News), the Plan's previous sponsor. Tuscaloosa News was liquidated and operations were continued under the name of the Tuscaloosa News Division of The New York Times Company (The Times Division). The Times Division terminated the Plan as of May 1, 1985 and authorized the distribution of all assets to the participants in the Plan in proportion to their respective account balances. The Plan's assets consist of United States bonds, cash and the Notes.

The applicant represents that it experienced difficulty in selling the Notes. In order to facilitate complete distribution of the Plan's assets, The Times Division purchased the Notes from the Plan for cash on December 15, 1986. The Times Division paid a total of \$137,399.89 plus accrued interest through December 15, 1986, of \$5,624.46 for the Notes.

3. The Notes consist of the following: (a) A 38.8% interest in a \$90,000 unsecured promissory note dated February 11, 1980, made by Cloquet Newspapers, Inc. (Cloquet), a newspaper publishing company located in Cloquet, Minnesota (the Cloquet Note); (b) a \$40,000 unsecured promissory note dated October 1, 1975, made by Logan Media, Inc. (Logan), a newspaper publishing company located in Logan, West Virginia (Logan Note #1); and (c) a \$153,318 unsecured promissory note dated June 1, 1983 made by Logan (Logan Note #2). The applicant represents that The Times had no equity or debt interest in either Cloquet or Logan. The applicant represents further that neither Cloquet nor Logan were parties in interest with respect to the Plan at the time the Notes were made or at any time thereafter.

4. The Cloquet Note bears interest at a rate of 9% per annum. Interest payments only were due on February 11, 1981, and February 11, 1982, after which principal and interest became payable in 120 monthly installments. The Plan participated in the Cloquet Note with two other profit sharing plans which are unrelated to the Plan or the Times. The original book value of the Plan's interest in the Cloquet Note, \$35,000, was reduced as principal payments were made. The applicant states that the

Plan's share in the Cloquet Note had an outstanding principal balance and book value of \$22,194.30 as of December 15, 1986.

The First Boston Corporation (First Boston), a registered investment advisor and investment banker in New York City, was chosen to provide an independent appraisal of the Cloquet Note, as well as the other Notes. The Times maintains an investment banking relationship with First Boston. However, the applicant states that the fees paid to First Boston by The Times for the investment services rendered to The Times during 1985 represented less than .02% of First Boston's 1985 revenues. In addition, George L. Shinn (Mr. Shinn), a director of The Times, is a director and Chairman of the Executive Committee of First Boston, Inc., First Boston's parent holding company. The applicant represents that Mr. Shinn played no part in the decision to utilize First Boston to evaluate the Notes for The Times and played no role in the analysis of the Notes.

The Cloquet Note was appraised by First Boston on December 15, 1986 as having a fair market value of \$18,200. The Times Division paid the Plan the outstanding principal balance on the Cloquet Note, which was the higher amount.

5. Logan Note #1 had an interest rate of 9% per annum from October 1, 1975 to October 1, 1978, and bears interest at a rate of 8% per annum from October 1, 1978 until October 1, 1993. Interest only was payable on October 1, 1976, October 1, 1977, and October 1, 1978. Thereafter, Logan Note #1 became payable in 180 equal monthly installments of principal and interest. The original book value of Logan Note #1 was reduced as principal payments were made. The applicant states that the outstanding principal balance and book value of Logan Note #1 was \$24,305.59 as of December 15, 1986.

First Boston appraised Logan Note #1 as having a fair market value of \$18,200 as of December 15, 1986. The Times Division paid the Plan the outstanding principal balance on Logan Note #1, which was the higher amount.

6. Logan Note #2 was accompanied by a stock option to purchase common stock in Logan (the Logan Stock), which included a put and a call provision (the Option). The terms of the Option provided for the issuance of a promissory note if the Logan Stock were put or called. In 1983, the Plan exercised the Option and put the Logan Stock back to Logan. The Plan paid par value for the Logan Stock (\$6,666). In exchange for the Logan Stock, Logan issued the Plan Logan Note #2, a \$153,318

unsecured promissory note dated June 1, 1983, bearing an 8% interest rate. The applicant states that the face amount of Logan Note #2 and the 8% interest rate were fixed by the terms of the Option Agreement. Payments on Logan Note #2 are required to be made in fifteen annual installments of principal and interest beginning June 1, 1984.

The applicant represents that since the interest rate on Logan Note #2 was substantially below the prevailing market interest rate at the time the Option was exercised, the Plan carried the note on its books at a discounted value. First Boston valued Logan Note #2 at \$90,900 as of December 15, 1986, which was in excess of the amount at which the note was carried on the Plan's books. The Times Division paid the Plan the fair market value for Logan Note #2, in accordance with First Boston's appraisal.

7. The Trustee and The Times Division represent that after the Plan was terminated, a decision was made to sell the Notes rather than continue the Plan in a "frozen" status until collection on the Notes could be completed. The applicant states that neither Logan nor Cloquet were willing to retire the Notes, and that all attempts to sell the Notes on the open market resulted in offers which were below the price offered by The Times Division.

8. The applicant represents that the sale of the Notes to The Times Division was in the best interest of the Plan and its participants and beneficiaries because it provided the Plan with proceeds in excess of the amount for which the Notes could have been sold on the open market. In addition, the Trustee was able to make immediate distribution of the participants' current account balances. All payments on the Notes and proceeds of the sale were distributed to the participants of the Plan. The Plan did not pay any commissions or other expenses with respect to the sale.

9. In summary, the applicant represents that the transaction met the statutory criteria of section 408(a) of the Act because: (a) The sale was a one-time transaction for cash; (b) the Plan received the higher of either the fair market value of each of the Notes or the outstanding principal balance or book value for each of the Notes, plus accrued interest, as of the date of sale; (c) the Plan did not incur any expenses in connection with the sale; and (d) the transaction enabled the Plan to make an immediate cash distribution of the participants' account balances.

For Further Information Contact: Mr. E.F. Williams of the Department,

telephone (202) 523-8881. (This is not a toll-free number.)

Lear Petroleum Profit Sharing Plan (the Plan) Located in Dallas, Texas

[Application No. D-6871]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 407(a) of the Act shall not apply, effective May 15, 1985, to the acquisition and holding by the Plan of certain units (the Units) representing limited partnership interests in Lear Petroleum Partners, L.P. (the Partnership) which were distributed as dividends to the Plan as a shareholder of Lear Petroleum Corporation (LPC) Common Stock (the Stock) on May 15, August 15, August 26 and November 13, 1985 and February 14, 1986.

Effective Date: If granted, this exemption will be effective May 15, 1985 and will be applicable only to the Units acquired on the dates specified above.

Summary of Facts and Representatives

1. The Plan is a defined contribution plan which had 300 participants as of December 31, 1985. The total assets of the Plan were valued at \$4,779,630 as of January 21, 1986. The trustee of the Plan is MBank Dallas, N.A. (MBank), a national bank located in Dallas, Texas. The Plan is sponsored by LPC.

2. The Partnership is a Delaware limited partnership created for the purpose of succeeding to a portion of the business of LPC, Lear Petroleum Exploration, Inc. (LPX) and LPC Energy, Inc. (LPCE), wholly-owned subsidiaries of LPC (together, the Lear Companies). On December 31, 1984, LPX transferred to the Partnership substantially all of its assets and LPC and LPCE transferred substantially all of their oil and gas properties (collectively, the Partnership Properties) in exchange for 100 percent of both the limited and general partnership interests of the Partnership. LPC and LPX became the general partners of the Partnership. In addition, the Partnership agreed to pay certain liabilities of the Lear Companies amounting to approximately \$60 million of outstanding debt as of December 31, 1984. The Partnership Properties include proven oil and gas reserves together with 452,955 net undeveloped leasehold acres. The Units are publicly traded on the American Stock Exchange and are freely transferable to any person who is

an "eligible citizen" permitted by federal law to own an interest in oil and gas leases on federal land.

The applicant states that the Partnership originally intended to continue the production, exploration and development activities of the Lear Companies with respect to the Partnership Properties. However, the Board of Directors of LPC has determined that, due to the current adverse conditions in the oil and gas industry and their negative impact on LPC's and the Partnership's financial condition, the interests of LPC's stockholders and the Partnership would best be served if the assets of the Partnership were sold.

3. On May 15, August 15, August 26 and November 13, 1985, and February 14, 1986, Units were distributed by LPC as dividends on the Stock to all shareholders of record who certified that they were "eligible citizens" under federal law. The initial distribution of Units on May 15, 1985 was made on the basis of one Unit for every twenty shares of the Stock held as of March 29, 1985. On August 15, and November 13, 1985 and February 14, 1986, LPC made a distribution of Units on the basis of one Unit for every forty shares of the Stock held as of June 27, October 1, and December 31, respectively. Additional Units were received on August 26, 1985 as a correction to the number of Units received by the Plan based on shares of the Stock held as of the March 29 and June 27, 1985 record dates. The applicant states that no Units were distributed after February 14, 1986.

4. The Plan receives contributions from participants and from LPC. All contributions are invested by MBank in one of five investment funds (the Funds), one of which invests exclusively in the Stock (the Stock Fund). The Units are held in the Stock Fund. Under the terms of the Plan, participants can direct the investment of their individual accounts into one or more of the Funds, except that no participant contributions can be invested directly in the Stock Fund. The applicant states that participants may change their previous investment directions semiannually, as of each of two valuation dates, June 30 and December 31. When participants want to sell their Units, they may opt out of the Stock Fund, in whole or in part, by selling the Stock and the Units in their accounts on the open market and reinvesting the proceeds of such sales in one or more of the other Funds. The applicant states further that although there have been some sales of the Units on the open market as a result of Fund-switching by participants, there have been no sales or purchases of Units

between the Plan and the Lear Companies or the Partnership. The applicant represents that all future sales of Units will continue to be conducted on the open market.

5. Prior to the first dividend distribution of Units on May 15, 1985, the Plan owned approximately 72,142 shares of the Stock. The Units held by the Plan had a fair market value of approximately \$150,529 as of March 31, 1986. The applicant states that the total amount of Units held by the Plan at any one time never represented more than approximately 5.5% of the Plan's total assets.

There are approximately 22,800,000 Units presently outstanding. LPC has suspended any further distribution of the Units as dividends on the Stock as a result of the decision to sell the Partnership to an unrelated party. The applicant states that other than the receipt of Units as dividends, no Units were received by the Plan. Further, the applicant does not intend to have the Plan receive any additional Units as dividends.

7. The applicant represents that the Units issued by the Partnership are "employer securities" as defined under section 407(d)(1) of the Act. However, the applicant states that relief from section 406(a) and 407(a) of the Act for the acquisition and holding of the Units by the Plan is necessary since the Units are not "qualifying employer securities" as defined under section 407(d)(5) of the Act.

8. In summary, the applicant represents that the transactions satisfy the statutory criteria of section 408(a) of the Act because: (a) the acquisition and holding of the Units by the Plan is the result of LPC's quarterly dividend distributions of the Units to all shareholders of the Stock; (b) the decision to hold or dispose of the Units is made by the participants in the Plan in accordance with directions given to MBank, as trustee, by each participant for his or her account; (c) the participants may change their previous instructions to MBank regarding the holding or disposition of the Units; and (d) all transactions concerning the Units, other than the distribution of the Units by LPC as dividends on the Stock, have been and will continue to be conducted on the open market.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Carson, Pirie, Scott and Company (the Company) Located in Chicago, Illinois

[Application No. D-6875]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed purchase by the Company of certain real property (the Property) from the Carson/Dobbs Hourly Employees' Pension Plan and the Carson/Dobbs Salaried Employees' Pension Plan (the Plans), which are sponsored by the Company, provided that the terms of such transaction are no less favorable to the Plans than the Plans could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representatives

1. The Plans are defined benefit pension plans with approximately 22,000 participants and total assets, commingled under one trust, of approximately \$75,786,000 as of September 12, 1986. The Company is a publicly-held Delaware corporation engaged in food service, lodging, floor covering distribution and department store and specialty store retailing, with its principal place of business in Chicago, Illinois. Investment decisions on behalf of the Plans are made by an Employee Benefits Committee comprised of officers and directors of the Company. The trustee of the Plans is the Continental Illinois National Bank and Trust Company of Chicago (the Trustee).

2. Among the assets of the Plans is the Property, a parcel of real property, 40 feet by 175 feet, located on the southwest corner of Wabash Avenue and Madison Street in the "Loop" area of Chicago, Illinois. The Plans purchased the Property in 1962 from unrelated parties, acquiring only the land without acquiring any interest in the Property's sole improvement, a four-story commercial structure (the Building). At that time, the Building was owned by the Company and has been utilized as a portion of a department store owned and operated by the Company. The Property has been leased (the Lease) by the Company from the Plans continuously since May 24, 1966. The

Lease is a land lease which provides that the Building and any improvements added to the Property during the term of the Lease are to remain the Company's property during the Lease term but will become the property of the Plans upon the Lease's termination. After commencement of the Lease, the Company made improvements to the Building to render it useable as a portion of the Company's department store which also occupies structures on adjacent property. The Company represents that the Lease satisfied the requirements of section 414(c)(2) of the Act and, therefore, was statutorily exempt until June 30, 1984 from the prohibitions of sections 406 and 407 of the Act.¹ The Property was appraised by Andrew W. Runge, MAI, SRPA (Runge), an independent, professional real estate appraiser affiliated with the Appraisal Corporation of America in Chicago. Runge represents that as of May 14, 1986 the Property, including improvements thereon, had a fair market value of \$950,000. The Property was also appraised by Christopher C. Kuehnle, A.S.A., C.R.A., and Walter R. Kuehnle, M.A.I., A.S.A., professional real estate appraisers with the independent firm of Walter R. Kuehnle and Company in Chicago, who found that as of May 5, 1986, the Property and improvements had a fair market value of \$900,000. Since June 30, 1984, the Lease has continued in effect and the Company has continued to occupy the Property. In recognizing that the continuation of the Lease beyond June 30, 1984 constitutes a prohibited transaction in violation of sections 406 and 407(a) of the Act, the Company proposes to terminate the Lease by purchasing the Property from the Plans. The Company is requesting an exemption to permit such transaction under the terms and conditions described herein.

3. The Company proposes to pay the Plans cash for the Property in the amount of the fair market value of the Property according to Runge's appraisal. For purposes of the sale transaction, the Company will consider the ownership of the Building and other improvements on the Property as having passed to the Plans upon the June 30, 1984 expiration of the statutory exemption provided by section 414(c)(2) of the Act. Therefore, the purchase price paid to the Plans for the Property will include the fair market value of such improvements according to Runge's appraisal. The Company will bear all costs and expenses related to the sale transaction. Runge represents

that his valuation of the Property at \$950,000 includes consideration of the Company's ownership of adjacent property. Runge's appraisal also includes an appraisal of the Property's fair market rental value as of that date, and such fair market rental value exceeds the rental rate which the Company has paid in rent under the Lease since June 30, 1984. As part of the sale transaction, the Company will pay the Plans an additional amount sufficient to compensate the Plans for back rentals on the Property, including improvements, at the rate of Runge's valuation retroactively from July 1, 1984 through the date of the sale. Additionally, with respect to these additional retroactive rental amounts, the Company will pay the Plans interest at a rate determined by the Trustee to be appropriate to compensate the Plans for lost interest on such amounts.

4. The Department is not proposing exemptive relief for the continuation of the Lease beyond June 30, 1984. The Company acknowledges that the Lease's continuation beyond June 30, 1984 through the date of the proposed sale constitutes a prohibited transaction under the Act and the Code for which no exemptive relief is proposed herein. Accordingly, the Company represents that it will pay any excise taxes which are applicable under section 4975(a) of the Code by reason of such Lease of the Property within 60 days of the publication in the Federal Register of a notice granting the exemption proposed herein.

5. In summary, the applicant represents that the criteria of section 408(a) of the Act are satisfied in the proposed transaction for the following reasons: (1) The Plans will receive cash for the Property in the amount of the Property's fair market value according to Runge's appraisal, the higher of two appraisals of the Property; (2) The Plans will incur no costs or expenses related to the proposed transaction; (3) The Plans will be compensated in an additional amount representing the difference between rent actually paid by the Company since June 30, 1984 and the Property's fair market rental value according to Runge; and (4) The Plans will be compensated for the lost interest on the additional rental amounts in an amount determined by the Trustee to be appropriate.

For Further Information Contact: Ronald Willett of the Department (202) 523-8881. (This is not a toll-free number.)

¹ The Department expresses no opinion as to whether the Lease satisfied the requirements of section 414(c)(2) of the Act.

Meloy Manufacturing, Inc. Pension and Profit Sharing Plans and Trust (the Plans) Located in Knox County, Tennessee

[Application No. D-6966]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale by the Plans of certain real property to Bob Meloy (Meloy), a party in interest with respect to the Plans; provided that such transaction is on terms at least as favorable to the Plans as those the Plans could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plans are a defined benefit plan and defined contribution plan combined under one trust, with two participants and total assets of \$53,374.34 as of July 31, 1985. The Plans are sponsored by Meloy Manufacturing, Inc. (the Employer), a closely-held Tennessee corporation engaged in the manufacture of sports clothing in Knox County, Tennessee. Meloy is an officer, director and majority shareholder of the Employer. Meloy and his wife, Linda Meloy, are the Plans' trustees and the only participants currently in the Plans, although Meloy represents that additional participants are anticipated in the near future due to the Employer's growth since the Plans' origination. The Plans are administered by ERISA Services, Inc. (ESI) in Knoxville, Tennessee.

2. Among the assets of the Plans is a 1.19 acre parcel of unimproved residentially-zoned real property (the Property) located on Fort Loudon Lake in the Lake Shores Meadows subdivision of West Knox County, Tennessee. According to Dale Horst (Horst), a plan administrator with ESI, the Property was purchased on behalf of the Plans by Meloy from unrelated parties on August 23, 1983 for its appreciation potential, which appeared substantial at that time. Horst represents that the Plans have invested a total of \$33,418.96 in the Property, including a purchase price of \$31,500. As of November 5, 1986, the Property had a fair market value of \$33,700, according to David L. Shelton (Shelton), an independent professional real estate appraiser in Knox County, Tennessee. Horst represents that after the Plans' purchase of the Property a large

residential retirement and golfing community development was initiated on a neighboring lake which became the most popular development site in the area, and, as a result, the Property has failed to appreciate as expected. Horst represents that any change in the Property's non-appreciating status is highly unlikely for the foreseeable future. Horst maintains that with prospects of inflation remaining low, the Property lacks the possibility of providing the Plans with inflation protection, especially in light of the area's current real estate market. The Property remains vacant and produces no income. Meloy represents that the Property, representing approximately sixty percent of the Plans' assets, constitutes a liquidity problem for the Plans which is exacerbated by the possible addition of participants in the near future. Meloy and Horst have determined that the Plans should sell the Property and invest the sale proceeds in more liquid investments which produce income for the Plan.

3. For the foregoing reasons, Meloy proposes to purchase the Property in his individual capacity from the Plans and is requesting an exemption to permit such purchase under the terms and conditions described herein. Meloy will pay the Plans cash for the Property in the amount of the Property's fair market value according to Shelton's appraisal. Meloy will pay all costs and expenses related to the sale transaction. Meloy represents that he has no interest in any property in the vicinity of the Property.

4. In summary, the applicant represents that the criteria of section 408(a) of the Act are satisfied in the proposed transaction for the following reasons: (1) The Plans will dispose of a non-appreciating asset which produces no income; (2) The proposed transaction will enable the Plans to invest in income-producing assets which will provide the Plans with increased liquidity; (3) The Plans will receive cash for the Property in the amount of the Property's fair market value according to Shelton's appraisal; and (4) The Plans will incur no costs or expenses related to the transaction.

For Further Information Contact: Mr. Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Donald S. Perkins Defined Benefit Plan and Trust (the Plan) Located in Chicago, Illinois

[Application No. D-6984]

Proposed Exemption

The Department is considering granting an exemption under the

authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale of certain publicly traded securities to the Plan by Donald S. Perkins (Mr. Perkins), a disqualified person with respect to the Plan, provided that the terms of sale are no less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party at the time the transaction is consummated.¹

Summary of Facts and Representations

1. The Plan is a defined benefit Keogh plan whose only participant is Mr. Perkins. The Plan has net assets of \$669,794 as of September 30, 1986. Mr. Perkins is a self-employed individual who serves as a director on the boards of various publicly traded Companies.

2. In order to meet the Plan's minimum funding requirement of \$220,550, Mr. Perkins proposes to transfer certain publicly traded securities to the Plan with the remainder to be paid in cash. The proposed contribution would include approximately 2200 shares of common stock in seven different corporations.² After the proposed transfer, the Plan's investment in each company will not exceed 25% of the total Plan assets. All of the above securities are publicly traded on the New York Stock Exchange (the Exchange) and the number of shares contributed will be dependent upon and valued at the closing price of the securities on the Exchange on the date of the contribution. Mr. Perkins will pay any and all expenses related to the transfer of the securities to the Plan.

¹ Since Mr. Perkins is the only participant in the Plan there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Corporation	Ex-change	Approximate number of shares to be contributed*	Current per share market value**	Total market value
Cummins Engines Combined International	NYSE	700	\$62.50	\$43,750
Time, Inc.	NYSE	700	54.75	38,325
Springs Industries	NYSE	100	77.00	7,700
Corning Glass	NYSE	300	50.625	15,188
AT&T	NYSE	200	55.25	11,050
Inland Steel	NYSE	100	25.00	2,500
			19.875	1,987
Total				120,500

*Actual shares contributed will depend on the closing price of the securities on the date of contribution.

**Closing price on November 14, 1986.

3. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 4975(C)(2) of the Code because:

(a) Each of the contributed securities will represent less than 25% of the Plan's assets on the date of acquisition;

(b) All expenses relating to the transfer will be paid by Mr. Perkins; and

(c) Mr. Perkins is the only Plan participant effected by the transaction, and he desires that the transaction be consummated.

Notice to Interested Persons: Because Mr. Perkins is the only participant in the Plan, it has been determined by the Department that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and

protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 3rd day of March, 1987.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87-4848 Filed 3-6-87; 8:45 am]

BILLING CODE 4510-29-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24153; File No. SR-PSDTC-87-01]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Securities Depository Trust Co. Amending Its Definitions

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 17, 1987, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Commission the proposed rule change described below. The Commission is publishing this notice to solicit comments on the proposed rule change.

PSDTC states that the proposed rule change expands the definition of "Special Representative" to encompass all registered clearing agencies that PSDTC may deal with in the course of conducting its business. This definition replaces the old definition of "Special Representative," which limited the

registered clearing agency on whose behalf a Special Representative may act to only the major registered depositories and PSDTC's clearing agency affiliate, the Pacific Clearing Corporation.

Furthermore, PSDTC states that the proposed rule change is consistent with section 17A(b)(3)(F) of the Act in that the proposal promotes the prompt and accurate clearance and settlement of securities transactions and fosters cooperation and coordination among persons engaged in the clearance and settlement of securities transactions.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of the Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the change if it appears to the Commission that it is necessary or appropriate in the public interest, for protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submission should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provision of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing also will be available for inspection and copying at the principal office of PSDTC. All submissions should refer to File No. SR-PSDTC-87-01 and should be submitted by March 30, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 27, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-4905 Filed 3-6-87; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Notice of Application by The Ultimate Corp. (Common Stock, No Par Value) to Withdraw From Listing and Registration

(File No. 1-8197)

March 2, 1987.

The Ultimate Corporation ("Company") has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex"). The Company's common stock was recently listed for trading on the New York Stock Exchange ("NYSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the Amex. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before March 23, 1987 submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 87-4906 Filed 3-6-87; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-24155; File No. SR-PSDTC-87-02]

Self-Regulatory Organization; Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Securities Depository Trust Co. Amending Its Policy and Procedures for Making Securities Eligible at PSDTC

Pursuant to section 19(b)(1) of the

Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on February 18, 1987, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Commission the proposed rule change described below. The Commission is publishing this notice to solicit comments on the proposed rule change.

PSDTC's proposed rule change sets up uniform policy and procedures for making securities eligible at PSDTC in order to achieve consistent and cost-effective processing of eligibility requests, eliminate acceptance of securities as and eligible securities that PSDTC cannot handle operationally, and improve the integrity of the PSDTC's eligible securities list. (See Exhibit A)

PSDTC states that the proposed rule change is consistent with section 17A(b)(3)(F) of the Act in that the proposal promotes the prompt and accurate clearance and settlement of securities transactions and fosters cooperation and coordination among persons engaged in the clearance and settlement of securities transactions.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of the Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the change if it appears to the Commission that it is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Person making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth St. NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth St. NW., Washington DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of PSDTC. All submissions should refer to File No. SR-PSDTC-87-02 and should be submitted by March 30, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 2, 1987.

Jonathan G. Katz,
Secretary.

Exhibit A

Policy and Procedures for Making Securities Eligible at PSDTC

I. Routine Eligibility Requests

A. Policy

(1) Securities will be made eligible at PSDTC within 48 hours from date of receipt, provided the requirements listed below are met.

(2) Participants will be notified orally of rejected eligibility requests within 48 hours after the day PSDTC received the request.

(3) Only security types currently eligible at PSDTC will be accepted.

B. Procedures

(1) Participants must submit a completed eligibility request form (also known as Security Master File Addition) along with copies of the front and back of certificate to the CUSIP Department.

(2) The minimum information required will be as follows:

- (a) CUSIP number
- (b) full security description
- (c) interest rates
- (d) maturity dates
- (e) issue date (municipal bonds only)
- (f) transfer agent name and address

(3) A copy of the prospectus is required for new issues.

(4) Requests may be dexted to the CUSIP Department at 415/393-4221 or submitted through the Clearing Windows.

II. Emergency Eligibility Requests

A. Policy

(1) Securities will be made eligible at PSDTC on a best-efforts basis for trade settlement on the *next business day*.

(2) A maximum of five emergency requests per firm can be submitted daily.

(3) Participants will be notified by the end of the business day if the CUSIP cannot be made eligible.

(4) Only security types currently eligible at PSDTC will be accepted.

B. Procedures

(1) Requests must be submitted to the CUSIP Department by 10:30 am PST.

(2) Requests must be called in (415/393-4199) or dexted directly to the CUSIP

Department (415/393-4221). Note: Participants must call the CUSIP Department prior to dexting requests.)

(3) Copies of the front and back of certificates must be provided for physical deliveries.

(4) For bookentry trade settlement, the minimum information required will be as follows:

- (a) CUSIP number
- (b) full security description
- (c) interest rates
- (d) maturity dates
- (e) issue date (municipal bonds only)
- (f) transfer agent name and address

III. Special Eligibility Requests

A. Underwritings

(1) Policy: Securities will be made eligible at PSDTC, provided the requirements are submitted *two weeks prior* to settlement date.

(2) Procedures: The following are the requirements:

- (a) signed Letter of Authorization
- (b) Initial Notification
- (c) DTC Questionnaire (if DTC eligibility is required)
- (d) two copies of prospectus or red herring

B. Bulk Deposits (Multiple Issues)

(1) Policy: Securities will be made eligible at PSDTC, provided the requirements are submitted at least *ten days prior* to deposit date.

(2) Procedures

- (a) copies of front and backs of certificates (Note: Special arrangements will be considered if participants are unable to comply with this requirement.)
- (b) Processing time may vary depending on deposit size.

[FR Doc. 87-4907 Filed 3-6-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24154; File No. SR-PCC-87-02]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Clearing Corp. Amending Its Definitions and Descriptions

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 17, 1987, the Pacific Clearing Corporation ("PCC") filed with the Commission the proposed rule change described below. The Commission is publishing this notice to

solicit comments on the proposed rule change.

PCC's proposed rule change amends its Rule I, Sec. 2 which does not define the terms "Representative" and "Special Representative" even though both terms are mentioned within the rules. PCC states that the addition of the terms to the Definitions and Descriptions in its Rule I is intended to correct this oversight.

Furthermore, PCC states that the proposed rule change is consistent with section 17A(b)(3)(F) of the Act in that the proposal promotes the prompt and accurate clearance and settlement of securities transactions and fosters cooperation and coordination among persons engaged in the clearance and settlement of securities transactions.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of the Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing the proposed rule change, the Commission may summarily abrogate the change if it appears to the Commission that it is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of PCC. All submissions should refer to File No. SR-PCC-87-02 and should be submitted by March 30, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 27, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-4908 Filed 3-6-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-3791]

Issuer Delisting; Application by United Canso Oil & Gas Ltd. (Common Stock, Par Value \$1.00) to Withdraw From Listing and Registration on the Boston Stock Exchange.

February 27, 1987.

United Canso Oil & Gas Ltd. ("Company"), a Canadian Corporation, has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The listing of the Company's common stock on the BSE is not seen by the Company to be of any significant continuing advantage to the shareholders. When trading on the BSE began in 1975, it helped to broaden public ownership of shares. However, most of the share transactions in the United States now take place on the Pacific Stock Exchange ("PSE"). In addition to the BSE, the Company's common stock is currently listed on the PSE as well as the Toronto and Montreal Stock Exchanges in Canada. The Company has also indicated that it intends to delist from the Montreal Stock Exchange. The Company believes that its shareholders will not suffer adversely from a delisting from the BSE because it tends to maintain its listing on the PSE.

Any interested person may, on or before March 19, 1987 submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 87-4909 Filed 3-6-87; 8:45 am]

BILLING CODE 8010-01-M

**Self-Regulatory Organizations;
Applications for Unlisted Trading
Privileges and of Opportunity for
Hearing; Cincinnati Stock Exchange,
Inc**

March 3, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Carolco Pictures, Inc.

Common Stock, \$0.01 Par Value (File No. 7-9765)

Hanna (M.A.), Co.

Common Stock, \$1.00 Par Value (File No. 7-9766)

Interpublic Group Companies, Inc.

Common Stock, \$0.10 Par Value (File No. 7-9767)

PHL Corp., Inc.

Common Stock, \$1.00 Par Value (File No. 7-9768)

Transworld Liquidating

Common Stock, No Par Value (File No. 7-9769)

Atari Corp.

Common Stock, \$0.01 Par Value (File No. 7-9770)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 24, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 87-4911 Filed 3-6-87; 8:45 am]

BILLING CODE 8010-01-M

**Self-Regulatory Organizations;
Applications for Unlisted Trading
Privileges and of Opportunity for
Hearing; Cincinnati Stock Exchange,
Inc.**

March 3, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Acme-Cleveland Corp.

Common Stock, \$1.00 Par Value (File No. 7-9704)

Alberto-Culver Co.

Class A Common Stock, \$22 Par Value (File No. 7-9705)

Aristech Chemical Corp.

Common Stock, \$1.00 Par Value (File No. 7-9706)

Arkansas Best Corp.

Common Stock, \$1.00 Par Value (File No. 7-9707)

BanAmerica Realty Investors

Shares of Beneficial Interest (File No. 7-9708)

Banner Industries, Inc.

Common Stock, \$0.10 Par Value (File No. 7-9709)

Bemis Company, Inc.

Common Stock, \$5.00 Par Value (File No. 7-9710)

Briggs & Stratton Corp.

Common Stock, \$3.00 Par Value (File No. 7-9711)

British Gas PLC

American Depository Shares (File No. 7-9712)

Broadway, Inc.

Common Stock, \$2.50 Par Value (File No. 7-9713)

Brown & Sharpe Manufacturing Co.

Common Stock, \$1.00 Par Value (File No. 7-9714)

Burndy Corp.

Common Stock, \$1.00 Par Value (File No. 7-9715)

Butler International Inc.

Common Stock, \$1.00 Par Value (File No. 7-9716)

CLC of America

Common Stock, \$0.50 Par Value (File No. 7-9717)

Carteret Savings Bank, FA

Common Stock, \$0.01 Par Value (File No. 7-9718)

Comdata Network, Inc.

Capital Stock, \$0.02 Par Value (File No. 7-9719)

Countrywide Mortgage Investments, Inc.

Common Stock, \$0.01 Par Value (File No. 7-9720)

Ecolab, Inc.

Common Stock, \$1.00 Par Value (File No. 7-9721)

Esterline Corp.

Common Stock, \$0.20 Par Value (File No. 7-9722)

First Union Real Estate Equity and Mortgage Investments

Shares of Beneficial Interest (File No. 7-9723)

Franklin Resources, Inc.

Common Stock, \$0.10 Par Value (File No. 7-9724)

Freeport-McMoran Energy Partners, Ltd.

Depository Units (File No. 7-9725)

Fruehauf Corp.

Class B, \$0.01 Par Value (File No. 7-9726)

Fruehauf Corp.

\$3.68 Cumulative Exchange Preferred, \$0.01 Par Value (File No. 7-9726A)

CF Corp.

Common Stock, \$5.00 Par Value (File No. 7-9727)

The Gabelli Equity Trust Inc.

Common Stock, No Par Value (File No. 7-9728)

General American Investors Co., Inc.

Common Stock, \$1.00 Par Value (File No. 7-9729)

Heck's Inc.

Common Stock, \$0.10 Par Value (File No. 7-9730)

InterCapital Income Securities Inc.

Common Stock, \$0.01 Par Value (File No. 7-9731)

J.P. Industries, Inc.

Common Stock, \$0.10 Par Value (File No. 7-9732)

Earl M. Jorgensen Co.

Common Stock, \$1.00 Par Value (File No. 7-9733)

Kollmorgen Corp.

Common Stock, \$2.50 Par Value (File No. 7-9734)

Liberty All-Star Equity Fund

Shares of Beneficial Interest (File No. 7-9735)

Longs Drug Stores Corp.

Common Stock, No Par Value (File No. 7-9736)

Luby's Cafeterias, Inc.

Common Stock, \$0.32 Par Value (File No. 7-9737)

MEI Diversified, Inc.

Common Stock, \$0.05 Par Value (File No. 7-9738)

MassMutual Income Investors Inc.

Common Stock, \$1.00 Par Value (File No. 7-9739)

Montgomery Street Income Securities Inc.

Common Stock, \$1.00 Par Value (File No. 7-9740)

Mony Real Estate Investors

Common Stock, \$0.50 Par Value (File No. 7-9741)

Newell Co.

Common Stock, \$1.00 Par Value (File No. 7-9742)

Patten Corp.

Common Stock, \$0.01 Par Value (File No. 7-9743)

Piedmont Natural Gas Co., Inc.

Common Stock, \$0.50 Par Value (File No. 7-9744)

Public Service Co. of New Hampshire
13% Cumulative S.F. Preferred, \$5.00 Par Value (File No. 7-9745)

Ranco, Inc.
Common Stock, \$2.50 Par Value (File No. 7-9746)

Reebok International Ltd.
Common Stock, \$0.01 Par Value (File No. 7-9747)

Roper Corp.
Common Stock, \$0.50 Par Value (File No. 7-9748)

RTE Corp.
Common Stock, \$1.00 Par Value (File No. 7-9749)

Schaefer Value Trust Inc.
Common Stock, \$0.01 Par Value (File No. 7-9750)

Sealed Power Corp.
Common Stock, \$10.00 Par Value (File No. 7-9751)

Sparton Corp.
Common Stock, \$1.25 Par Value (File No. 7-9752)

Stanhope, Inc.
Common Stock, \$.25 Par Value (File No. 7-9753)

Thompson Medical Co., Inc.
Common Stock, \$0.10 Par Value (File No. 7-9754)

Tokheim Corp.
Common Stock, \$1.00 Par Value (File No. 7-9755)

USF&G Corp.
\$4.10 Cumulative Convertible Series A Preferred, \$2.50 Par Value (File No. 7-9756)

Universal Leaf Tobacco Co., Inc.
Common Stock, No Par Value (File No. 7-9757)

Varco International, Inc.
Common Stock, No Par Value (File No. 7-9758)

Vista Chemical Co.
Common Stock, \$0.01 Par Value (File No. 7-9759)

Warner Communications Inc.
\$3.625 Cumulative Convertible Series A Preferred, \$1.00 Par Value (File No. 7-9760)

American Capital
Common Stock, \$0.10 Par Value (File No. 7-9761)

First Australia Prime Income Fund, Inc.
Common Stock, \$0.01 Par Value (File No. 7-9762)

Materials Research Corp.
Common Stock, \$1.00 Par Value (File No. 7-9763)

Servotronics, Inc.
Common Stock, \$0.20 Par Value (File No. 7-9764)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 24, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three

copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 87-4912 Filed 3-8-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

March 3, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

American Barrick Resources Corporation
Common shares, No Par Value (File No. 7-9771)

TCW Convertible Securities Fund Inc.
Common Stock, \$.01 Par Value (File No. 7-9772)

Food Maker, Inc.
Common Stock, \$.01 Par Value (File No. 7-9773)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 24, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 87-4913 Filed 3-8-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24144; File Nos. SR-NYSE-86-4 and -30]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Changes

I. Introduction

On January 23, 1986, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed a proposal to amend its margin rules, Rule 431, which establishes initial¹ and maintenance² margin requirements for member organization customers' securities transactions and Rule 432, an accompanying recordkeeping rule. This proposal generally would lower maintenance margin requirements for debt securities, and permit member firms to extend greater amounts of credit on control and restricted securities subject to certain net capital deductions. The proposal was published for comment.³ No comments were received.⁴

This proposal marks the first comprehensive review by the NYSE of its maintenance margin requirements in over thirty years. The Exchange undertook this review, assisted by a membership committee with credit, operations and options expertise, to make its margin provisions more responsive to the current market credit and risk concerns, and to harmonize the rule with 1984 revisions to Regulation T of the Board of Governors of the Federal Reserve System ("Board").⁵

¹ Initial margin is the amount of equity required to be deposited in a customer's account upon purchase or short sale of a security.

² Maintenance margin is the amount of equity required to be maintained in a customer's account, and will fluctuate depending on market value of the securities in the account.

³ See Securities Exchange Act Release No. 22875 (February 7, 1986), 51 FR 5819 (File No. SR-NYSE-86-4). On February 11, 1987, the NYSE filed Amendment No. 1 to File No. SR-NYSE-86-4, which makes some technical clarifying modifications to the proposal, and includes a provision on maintenance margin for zero coupon government bonds.

⁴ The Exchange did circulate an earlier version of the rule proposal among its members, and made a number of revisions in response to comments received.

⁵ 12 CFR 220 (1985). Regulation T establishes the amount of credit that can be extended by broker-dealers for purchases and short sales of securities, other than exempted securities.

II. Description of the Proposal

The NYSE's proposal does not affect customer initial or maintenance margin requirements for equity securities; those remain at 50% and 25% of market value, respectively. The proposal does, however, modify maintenance margin requirements for debt securities, including government securities, municipal securities, and non-convertible corporate bonds that are listed or traded on a registered national securities exchange or qualify as an "OTC margin bond" under Regulation T.⁶ Specifically, the proposal would change maintenance margin rates on U.S. government obligations⁷ from the current requirement of 5% of principal amount to a sliding scale of 1-6% of market value depending on the maturity of the instrument.⁸ Maintenance margin requirements for municipal securities would be changed from the current lower of 15% of principal amount or 25% of market value, to the greater of 15% of market value or 7% of principal amount. The change generally would lower current margin requirements for bonds trading under par, and raise the requirements for those trading above par.⁹ The proposal also would provide a minimum margin for deeply discounted municipal bonds. For non-convertible debt securities that are listed or traded on a registered securities exchange or qualify as an "OTC" margin bond" under Regulation T, the proposal would change margin requirements from 25% of market value to the greater of 20% of market value or 7% of principal amount. This change would result in lower margin requirements for all but the most deeply discounted non-convertible corporate bonds. Finally, the proposal would permit accrued interest on all these debt instruments to be used as a margin offset.

The proposal also would permit NYSE member firms to carry the accounts of certain specialists who are registered on other national securities exchanges and of over-the-counter ("OTC") market makers on a "good faith" margin basis,¹⁰ so long as the member deducts

from its net capital any deficiency between the margin provided and that otherwise required by the rule to be deposited by customers. Currently, the rule permits only NYSE member specialist organizations to be carried on "good faith" margin basis by other members. The proposal also would permit members to carry the proprietary accounts of other member organizations on a margin basis mutually agreed upon, provided the carrying firm deducts from its net capital any deficiencies between the margin maintained and that deposited, and the account is not in a deficit equity condition. Further, the proposal would impose a net capital deduction on member firms whenever margin deficiencies in all accounts guaranteed by another account exceed 10% of the member organization's excess net capital.¹¹

One area in which the proposal makes extensive revisions to current requirements concerns the amount of credit a member organization is permitted to extend on control and restricted securities subject to Rules 144¹² and 145(d)¹³ under the Securities Act of 1933 ("1933 Act").¹⁴ Currently, the NYSE margin rule prohibits a member broker-dealer from extending credit on the control, restricted, or shelf registered¹⁵ securities of one issuer in

an amount that exceeds 5% of its excess net capital, or from extending credit on all control, restricted or shelf-registered securities in an amount that exceeds 25% of excess net capital. The rule currently further requires the member broker-dealer to reduce by the full amount of credit extended on control, restricted or shelf registered securities its excess net capital for purposes of the NYSE's "early warning" rule.¹⁶

The NYSE proposal would replace the absolute limits on the amount of credit a member organization could extend on control and restricted securities¹⁷ with certain modified excess net capital reductions.¹⁸ Further, the proposal would impose more stringent net capital deductions on member organizations that extended credit on concentrations of control and restricted securities in customer's accounts.¹⁹ As a result, these proposed changes would permit better capitalized member firms to extend a greater amount of credit on these restricted securities. The proposal would exempt from these special requirements those securities that are saleable without volume limitation under Rule 144(k) or Rule 145(d)(2) or (3), provided the issuer is current in its filings under

¹⁶ Rule 326, the NYSE's "early warning" rule, prohibits a member organization from increasing its business or requires contraction of its business if excess net capital falls below certain levels.

¹⁷ The proposal, as amended by Amendment No. 1, deletes credit extended on shelf registered securities from the calculation of excess net capital and net capital deductions required by the rule.

¹⁸ The proposal would require a member organization to reduce excess net capital by the amount that the credit it agreed to extend on any one class of a control or restricted security exceeds 10% of the firm's excess net capital. Also, the proposal provides for reduced excess net capital deductions for the aggregate amount of credit a broker-dealer actually has extended on all securities. The member would be required to reduce excess net capital by 25% of the aggregate credit extended that was equal to or less than 50% of the member's excess net capital, and by 100% of the credit extended that exceeded 50% of the member's excess net capital.

¹⁹ Currently, Rule 431 requires a member organization to deduct from its net capital any deficiency between the margin required to be maintained by the customer on control and registered securities and a 25% of market value maintenance requirement imposed on the broker-dealer, which takes into account only those control and restricted securities that can be sold consistent with Rules 144 and 145(d). The proposal would replace the 25% member organization margin requirement with increasingly greater member firm margin requirements, ranging from 25%—100% of the market value, depending on the concentration of control and restricted securities in all customer accounts. Concentration is defined in the proposal as a position in the class of any security that exceeds 10% of the outstanding shares or 100% of the average weekly volume during the preceding three month period for that class of security.

⁶ See 12 CFR 220.2(r).

⁷ The NYSE proposal includes in U.S. government obligations those issued or guaranteed as to principal or interest directly by the U.S. government or by any corporation in which the U.S. government has a direct or indirect interest and has been designated for exemption by the Secretary of the Treasury.

⁸ See Table A.

⁹ See Table B.

¹⁰ "Good faith" margin is the amount of margin a creditor establishes with a customer for a particular security position through the exercise of sound credit judgment.

¹¹ Excess net capital is the amount of net capital that exceeds minimum net capital required by Commission or self-regulatory organization rule.

¹² Rule 144 provides [17 CFR 230.144 (1983)] that any affiliate of the issuer or other person who sells restricted securities of an issuer for his account, or any person who sells restricted or any other securities for the account of an affiliate of the issuer, is not deemed to be engaged in a distribution of the securities, and therefore is not an underwriter as defined in Section 2(11) of the 1933 Act, if the securities are sold in accordance with all the terms and conditions of the rule.

¹³ 17 CFR 230.145 (1985). Rule 145 provides generally that any party, or any affiliate of such party, including a corporation (other than the issuer), whose assets or capital structure are affected by certain corporate reorganization transactions specified in the rule shall be deemed to be an underwriter for purposes of 1933 Act requirements. Rule 145(d) exempts from these requirements persons, among others, who sell the securities acquired in such transactions in compliance with certain Rule 144 limitations.

¹⁴ NYSE Rule 431 requires that a customer's maintenance margin requirement for control and restricted securities (which generally are, but not limited to, equity securities) is 40% of market value of securities deposited in the account, in contrast with 25% maintenance margin for all other equity securities. The proposal does not change the customer's maintenance margin requirement.

¹⁵ Shelf-registered securities are securities registered for continued or delayed offering pursuant to Commission Rule 415 under the 1933 Act [17 CFR 230.415 (1983)].

the Securities Exchange Act of 1934 ("Act").²⁰

The NYSE proposal further amends requirements for collection of margin deficiencies in customer accounts. Currently, the rule permits member organizations to collect customer margin deficiencies "within a reasonable time." The NYSE initially proposed to its membership a seven business day time limit in which to collect margin deficiencies, unless an extension is granted by the Exchange. Member firms opposed the proposed time frame for margin deficiency collection due to possible operational difficulties in liquidating accounts in a declining market and the need to exercise discretion to grant customers time extensions on a case-by-case basis rather than mandating account liquidation. In response to those concerns the NYSE determined to lengthen the margin deficiency collection period to 15 business days.

Finally, the proposal would for the first time require member firms to establish procedures to review the credit extended to customers, to formulate margin requirements, and to review whether margin requirements higher than those imposed by the rule are appropriate for particular customers.²¹

III. Discussion

The NYSE represents that its rule proposal is designed to protect investors and the public interest, and is consistent with Section 6 of the Act by ensuring that margin requirements reflect current regulatory and credit risk concerns. The Exchange further represents that the proposal is consistent with section 7 of the Act and the regulations of the Board because it is designed to prevent the excessive use of credit in connection with the purchase and carrying of securities.

A. Proposed Margin Rates

The NYSE proposal generally would lower maintenance margin rates for debt securities including government, municipal, and certain corporate debt instruments. Because these securities

are exempt from Regulation T initial margin requirements, the NYSE rule establishes both initial and maintenance requirements for these securities.²² The NYSE represents that its proposed sliding scale margin rates for government securities is appropriate because it would provide greater margin requirements for the more volatile long-term securities, and reduced margin requirements as government securities approach maturity to reflect the reduced risk in carrying those securities. The Exchange also points to the similar treatment of government securities in broker-dealer proprietary accounts by the Commission's net capital rule, which establishes certain net capital deductions, or "haircuts," based on the maturity of the instrument.²³ Moreover, the Exchange has provided an analysis of two-year historical price information for three Treasury securities of different maturities, a short-, intermediate-, and long-term instrument, and has determined based on that data that the proposed margin rates would be sufficient to cover all daily or weekly price movements in the short- and intermediate-term instruments.²⁴ The NYSE analysis further found that the proposed margin requirements for the more volatile long-term government instruments would provide at least a 96% confidence level that price movements over one and two week periods would be covered.²⁵

The NYSE proposed margin rates for municipal bonds would raise margin requirements for bonds trading above par. The NYSE believes this modification recognizes greater risks associated with higher priced bonds, which are more likely to react to market conditions. The proposal, however,

would lower, by as much as half of the current margin requirements, the margin required for certain municipal bonds trading under par.²⁶ The NYSE did not provide any price volatility data on municipal bonds, nor was it able to determine the extent to which municipal bonds are carried in margin accounts. Nevertheless, the NYSE stated that municipal bonds generally are not purchased on margin, but are used as collateral for other margin transactions.²⁷ Although the proposal would reduce significantly margin requirements for certain low priced municipal bonds, it also would impose a minimum margin for the most deeply discounted speculative issues. On that basis it appears the proposal should provide adequate credit risk protection.²⁸

The NYSE proposes to lower margin requirements for certain eligible non-convertible corporate debt securities from 25% to 20% of market value, with a new minimum margin requirement of 7% of principal amount. In support of this provision, the NYSE provided an analysis of price changes over a six-month period for corporate bonds of different maturities and investment quality, comparing maximum price changes for these bonds over a rolling two month period with the proposed margin requirements.²⁹ The NYSE analysis determined that for each bond the proposed margin requirement was more than adequate over the time period reviewed.

The NYSE proposal generally would lower maintenance margin requirements for government, municipal, and certain eligible non-convertible corporate debt securities. The proposed rates appear to be reasonable, however, and to provide member organizations adequate protection against adverse short-term market movements of securities in customer margin accounts. Nevertheless, the Commission notes that maintenance margin rates established by a self-regulatory organization are intended to set a minimum margin standard for its member organizations, which should not be constrained from requiring margin deposits in excess of the Exchange's minimum requirement when appropriate.

²² Government and municipal securities are exempt securities for purposes of Section 7 of the Act, the authority under which Regulation T was promulgated. Also, Regulation T permits "good faith" margin for non-convertible debt securities registered or with unlisted trading privileges on a national securities exchange or which qualify as "OTC margin bonds" under the rule. See 12 CFR 220.18(b).

²³ See Rule 15c3-1(c)(2)(vi)(A) [17 CFR § 240.15c3-1(c)(2)(vi)(A) (1986)].

²⁴ See letter from Donald Van Weezel, Managing Director, Regulatory Affairs, NYSE, to Thomas C. Etter, Jr., Division of Market Regulation, SEC, July 31, 1986.

²⁵ See *id.* and letter from Donald Van Weezel, Managing Director, Regulatory Affairs, NYSE, to Brandon Becker, Assistant Director, Division of Market Regulation, SEC, October 31, 1986, at 1-2 ("Van Weezel Letter"). The NYSE represents that it should continue its longstanding policy of applying the same margin requirements to both direct government and government agency obligations because of negligible differences in credit risk between these instruments and the absence of any problems with its policy in the past. See Van Weezel Letter, *id.* at 4.

²⁶ See Table B.

²⁷ See Van Weezel Letter, *supra* note 25, at 5.

²⁸ Nevertheless, the Commission believes that the NYSE should monitor the use of municipal bonds, particularly deeply discounted bonds, in customer margin accounts, and assess whether the proposed maintenance margin rates are adequate.

²⁹ See NYSE Two-Month Comparison via Six Month Trend on Non-Convertible Corporate Bonds, March-August 1985.

²⁰ Rules 144(k) and 145(d)(3) permit the sale of securities subject to these rules without volume limitation or notice requirement by persons who satisfy a three year holding requirement and have not been affiliates of the issuer for the preceding three months. Rule 145(d)(2) permits such sales by non-affiliates of an issuer current in its filings who satisfy a two year holding period.

²¹ Because of length and complexity of the proposal, it is not possible to describe each proposed amendment to the NYSE margin rule. Therefore, this order omits description of minor technical amendments, the text of which may be examined in the Federal Register notice of the filing. See *supra* n. 3.

B. Zero Coupon Government Bonds

The NYSE initially proposed to its membership that maintenance margin for zero coupon government bonds be set at a percentage of principal amount, ranging from 1% to 6%, depending on the maturity of the instrument. Because of membership concerns that the proposed margin could exceed the market value of some zero coupon government bonds with distant maturities, the NYSE revised its proposal to apply to zero coupon bonds the same margin rates based on market value as are proposed for other government instruments. In response to Commission staff concern that the proposed margin rates might be inadequate for zero coupon government bonds, the NYSE provided a comparison of price movements of zero coupon bonds and of coupon-bearing government securities with the same maturities.³⁰ While the data demonstrates that the prices of these instruments do move in tandem, it also shows that zero coupon bonds are more than twice as volatile as the coupon-bearing counterpart when price changes are measured as a percentage of market value. Accordingly, the NYSE amended its proposal to provide for a minimum maintenance margin of 3% of principal amount for zero coupon government obligations of five years or more to maturity.³¹ Recognizing that zero coupon government bonds, as all government securities, have no risk of default, and that the historical price data on zero coupon bonds provided by the NYSE indicates that margin of 3% principal amount would have been sufficient to cover any adverse price movements during that period, the NYSE proposed minimum margin for zero coupon government bonds appears adequate.

C. Accrued Interest

The NYSE proposal would allow member firms the discretion to use accrued interest on all debt securities to offset maintenance margin requirements. Although accrued interest is part of the price paid for a debt security, and recouped upon sale, it is not included in market value for purposes of calculating maintenance margin requirements.

The proposal on accrued interest raises two concerns. First, this provision would permit a greater margin offset for low quality bonds, which generally trade at higher yields and accrue more interest, than for investment quality bonds. Also, because NYSE maintenance margin rules in effect establish both initial and maintenance margin requirements for debt securities, the provision could be interpreted to permit accrued interest to finance initial purchases. The NYSE stated it would be inappropriate to limit the use of accrued interest as a margin offset to only investment quality bonds because such a "rating system" would be impractical.³² Further, the NYSE represented that member firms are "best able to develop and institute the appropriate credit risk policies with respect to the use of accrued interest."³³ Nevertheless, the NYSE did amend its proposal to clarify that accrued interest on debt securities may be used only to satisfy calls for maintenance margin deficiencies and not to finance additional purchases.³⁴

Although there is potential for accrued interest on some low grade bonds to offset a significant percentage of a margin deficiency, the Commission would expect member firms to assess carefully in such circumstances whether a higher margin requirement would be necessary. Accordingly, this provision as amended appears consistent with the Act.

D. Collection of Margin Deficiencies

The NYSE initially proposed a seven business day time period in which to collect margin deficiencies in customer accounts, but lengthened the period to 15 business days in response to strong membership opposition. Although seven business days appears to provide more than ample time in which to collect maintenance margin deficiencies, the NYSE maintains that 15 business days is an enforceable time frame and will allow "reasonable (and desirable) firm discretion to deal with margin calls as circumstances warrant."³⁵ But in response to the concern that the 15 business day time period may be excessive, the NYSE has proposed a two-year pilot,³⁶ during which time

through its oversight examination process the Exchange will monitor compliance with the time limit, and review the circumstances under which the member firms incurred net capital charges for customer margin deficiencies.³⁷

Although the Commission recognizes the necessity for providing broker-dealers flexibility in addressing margin deficiencies in different circumstances, and commends the NYSE for proposing a more stringent requirement than is in the rule at present, it is concerned that coupling lower margin requirements with a lengthy time period in which to collect that margin might expose member firms to increased risk. The Commission, however, believes that a two year pilot in conjunction with an exchange monitoring program is prudent, and will provide comprehensive information with which to assess whether member firms require three weeks to collect margin deficiencies.³⁸

IV. Mortgage Related Securities

On October 6, 1986, the NYSE filed another proposal to amend further its margin rule to establish a specific margin requirement for a mortgage related security as defined in section 3(a)(41) of the Act ("Mortgage Related Security")³⁹ that are carried in certain exempt accounts as defined in the exchange rule.⁴⁰

In 1984, Congress passed the Secondary Mortgage Market Enhancement Act ("SMMEA"), which was designed to increase funds available for housing by encouraging private sector participation in the mortgage market. SMMEA removes some, but not all, regulatory distinctions between mortgage-backed securities issued or guaranteed by government agencies and mortgage related securities as defined in the Act. For example, new

³⁷ The Commission's net capital rule requires a broker-dealer to deduct from its net capital the amount of cash required to satisfy a call for margin deficiency in a customer's account outstanding more than five business days. See Rule 15c3-1(c)(2)(xii) [17 CFR 240.15c3-1(c)(2)(xii) (1986)].

³⁸ At the conclusion of the two year pilot, the NYSE would submit to the Commission a proposed rule change either to retain or modify the proposed 15 business day margin collection period based on the findings from its monitoring program.

³⁹ Generally, a Mortgage Related Security represents an ownership interest in, or is secured by, first lien mortgages on residential property. These securities must be rated in one of the two highest rating categories by a nationally recognized statistical rating organization.

⁴⁰ This proposal was published for comment in the Federal Register. See Securities Exchange Act Release No. 23743 (October 22, 1986), 51 FR 40549 (File No. SR-NYSE-86-30). No comments were received.

³⁰ See Van Weezel Letter, *supra* n. 25, at 2-3.

³¹ Amendment No. 1 to File No. SR-NYSE-86-4. The NYSE also represented that privately-issued Treasury receipts collateralized by government securities, such as "CATS" and "TIGERS," are not deemed to be exempt securities for purposes of the NYSE margin rules, and would be subject to the maintenance margin rates for non-convertible corporate debt securities. See Van Weezel Letter, *supra* n. 25 at 3.

³² See Van Weezel Letter, *supra* n. 25, at 6.

³³ *Id.*

³⁴ See Amendment No. 1 to File No. SR-NYSE-86-4.

³⁵ See Van Weezel Letter, *supra* n. 25, at 7.

³⁶ See letter from James E. Buck, Vice President and Secretary, NYSE, to Sharon Lawson, Branch Chief, Division of Market Regulation, SEC, February 10 1987.

issues of Mortgage Related Securities purchased on a delayed delivery basis are exempt from Section 7 margin requirements and Section 11 prohibitions on credit extension as long as full payment is received within 180 days.⁴¹

The NYSE states in its proposal that its margin rule currently does not provide for any specific margin requirements for these Mortgage Related Securities. At present these securities, if eligible for margin under Regulation T,⁴² would be subject to maintenance margin requirements applicable to non-convertible corporate debt securities. Those margin rates are currently at 25% of market value, and are proposed to be reduced to 20% of market value. Moreover, although these privately issued Mortgage Related Securities are often fully collateralized by mortgage-backed securities issued or guaranteed by government agencies, they are not eligible for lower maintenance margin rates for government securities, which are currently 5% of principal amount and proposed to be changed to 1%-6% of market value depending on the maturity of the security. Therefore, the NYSE is proposing to establish a margin requirement of 5% of market value for Mortgage Related Securities that are carried in certain exempt accounts as defined by the rule.⁴³ For mortgage-backed securities that do not meet the statutory definition, or those eligible Mortgage Related Securities not carried in defined exempt accounts, the maintenance margin rates for non-convertible corporate debt securities would continue to apply.

The Exchange believes that more favorable margin treatment is appropriate because it will further the Congressional policies of SMMEA to reduce regulatory barriers for Mortgage Related Securities, because the credit risks of government-guaranteed mortgage-backed securities and Mortgage Related Securities are substantially similar, and because the limitation of types of eligible accounts would ensure participation of only the most relatively creditworthy and financially sophisticated investors. The NYSE further provided data on price volatility for Mortgage Related Securities over a two year period to demonstrate that the proposed margin

rate would provide adequate protection for ordinary market fluctuations 99% of the time.

The NYSE's proposed margin requirement for mortgage related securities that meet the definition in section 3(a)(41) of the Act and that are carried in certain defined exempt accounts is consistent with the Act because it appears to protect adequately a broker-dealer against the risks of carrying these securities and will apply only to those relatively more creditworthy and sophisticated accounts.

V. Conclusion

The Commission finds for the reasons discussed above that the NYSE proposals, as amended, are consistent with Section 6 of the Act and the rules thereunder applicable to national securities exchanges, and with section 7 of the Act, in that the proposals are consistent with the requirements in Regulation T, promulgated thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the NYSE rule proposals be approved.⁴⁴

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

February 27, 1987.

Table A

The proposed NYSE maintenance margin rates for U.S. government securities are:

Years to maturity ¹	Proposed NYSE rate (percent of market value)
Less than 1.....	1
1 but less than 3.....	2
3 but less than 5.....	3
5 but less than 10.....	4
10 but less than 20.....	5
20 or more.....	6

¹ The proposal specifies that a margin rate would be determined by the remaining life of the bond until maturity, not by the bond's nominal life from issuance date to maturity date.

Table B

The following is a comparison of current NYSE maintenance margin rates with the proposed rates for municipal

⁴⁴ The NYSE stated that it plans to delay implementation of File No. SR-NYSE-86-4 to allow member firms sufficient opportunity to develop systems and procedures to comply with the modified maintenance margin requirements. Therefore, in its proposal the NYSE indicates it will allow voluntary compliance by member firms with the rule 3 months after Commission approval date, and will mandate full compliance 6 months after approval.

securities with a \$1,000 principal amount.

Bond price	Current margin	Proposed margin	Dollar change
\$1,500.....	\$150	\$225	75
1,400.....	150	210	60
1,300.....	150	195	45
1,200.....	150	180	30
1,100.....	150	165	15
1,000.....	150	150	0
900.....	150	135	(15)
800.....	150	120	(30)
700.....	150	105	(45)
600.....	150	90	(60)
500.....	150	75	(75)
400.....	100	70	(30)
300.....	75	70	(5)
200.....	50	70	20
100.....	25	70	45

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STATE JUSTICE INSTITUTE

Program Guideline

AGENCY: State Justice Institute.

ACTION: Final Guideline.

SUMMARY: This guideline sets forth the procedures and program areas eligible for Fiscal Year 1987 funding from the State Justice Institute. The guideline describes the application process, identifies "special interest" program categories, and provides general information on conditions and limitations on awards.

EFFECTIVE DATE: April 8, 1987.

ADDRESS: Concept papers and applications should be submitted to State Justice Institute, 120 S. Fairfax St., Alexandria, Va.

FOR FURTHER INFORMATION CONTACT: David I. Tevelin, Executive Director, State Justice Institute, or Richard Van Duizend, Deputy Director, at the above address, (703) 684-6100.

SUPPLEMENTARY INFORMATION: On December 19, 1986, the State Justice Institute published a notice in the Federal Register announcing a draft Policy Statement for public comment. 51 FR 45573. Over 120 copies of the draft were sent to national organizations and institutions, universities, judges, court managers, researchers, educators and others. Thirteen written responses were received containing questions, suggestions and recommendations. The questions and comments fell into three areas.

1. **The Application Process.** Several of the comments raised questions about the amount of time that will be allowed for preparing submissions to the Institute. There were also suggestions to have several funding cycles each year

⁴¹ See sections 7(g) and 11(d) of the Act.

⁴² See 12 CFR 220.2(r)(2).

⁴³ The proposal would define an exempt account as a member organization, non-member broker-dealer, a "designated account" (defined to include the account of a bank, trust company, insurance company, or an investment trust, among others), and any person having net tangible assets of at least sixteen million dollars.

rather than only one, and to permit the submission of concept papers rather than applications to initiate the funding review process. The latter was seen as a means of reducing the amount of time and effort required for both applicants and the Institute staff. In addition, there were requests to clarify the portions of the guidelines concerning the priorities accorded to various classes of applicants, the length and content of program narratives, the requirements for match, and the required certification by a State's Supreme Court. Finally, it was urged that the Statement include the review criteria to be applied and that a competitive selection process be employed.

The Institute has adopted many of these suggestions. First, the Institute has adopted a schedule calling for two rounds of funding with the submission deadline for the first round set for April 17, 1987. Second, the Guidelines specify that courts, individuals and entities requesting Institute support must submit concept papers, no more than 10 double-spaced pages in length, by that date. The Board believes that a six-week submission period, coupled with the minimal submission requirements set forth in the Guideline, should provide applicants ample opportunity for concept paper preparation. For those requiring a lengthier development period, the Institute has reserved a substantial amount of funds for the second round of funding. Third, the final Guideline clarifies who is eligible to be awarded Institute funds and the priorities Congress established among categories of potential recipients. Fourth, the Guideline sets forth the format and contents of concept papers and applications, and establishes criteria for their review. Finally, an additional explanation of the match and certification requirements has been included.

2. "Special Interest" Program Areas. A number of comments urged that the Board set some priorities among the program areas or specify particular topics within those areas to provide added guidance to potential applicants. Several specific topics or programs were suggested along with a recommendation that there be greater specificity regarding the size of the awards to be made.

The relevance of education and training to many of the program areas was noted, along with the importance of establishing a close link between training and research and assuring the availability of technical assistance to facilitate the implementation and transfer of effective programs. Finally, a

question was raised whether the term "other court personnel" found in several of the program areas included elected court clerks as well as appointed court administrators.

In response, the Institute concluded that it would be inappropriate to accord one or more of the Congressionally-specified program areas a higher priority than another. However, the Guideline does not specify a number of "special interest" areas to guide potential applicants and provide greater focus to the program. The Institute will designate additional "special interest" programs if other critical needs or interests are identified by the applicants themselves or by other information coming to the attention of the Board, e.g., new research papers or other professional literature. The Guidelines make clear that projects of special interest must go beyond existing arrangements to improve the judiciary, address aspects of the State judicial systems that are in special need of serious attention, and have national significance in terms of their impact or capability of being transferred to and adopted by other courts and jurisdictions.

The program areas and special interest topics recognize the importance and scope of court education and training programs, provide for technical assistance, encompass most of the projects that were suggested, and are intended to include both elected and appointed court managers. Finally, the Guidelines now include benchmarks regarding the anticipated size of Institute awards.

3. General Clarifications. The comments raised a number of other points requiring clarification. These include whether the Institute staff will conduct research themselves, whether the Institute will itself perform a clearinghouse function, whether projects may address more than one program area, and whether concept papers not falling into one of the program areas will be considered. In addition, it was suggested that the statutory prohibition against the use of Institute funds to supplant state and local funds be expressed more fully.

In response to these comments, the Guidelines do not contemplate the Institute undertaking its own research during this program year, and the language regarding the information dissemination function has been revised to be consistent with the Institute's enabling legislation. Language has also been added to make clear that projects may address more than one program area or topic of special interest, and that concept papers on non-listed topics that

are consistent with the purposes of the Act will be considered. Finally, the Guideline now emphasizes that "funds will not be made available for ordinary and routine maintenance and operations of court systems in any of [the Program Areas]."

FY 1987 Programs of the State Justice Institute

I. Background

The State Justice Institute was established by Pub. L. 96-620 to improve the administration of justice in the State courts of the United States. See 42 U.S.C. 10701, et seq. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

A. Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;

B. Foster coordination and cooperation with the Federal judiciary;

C. Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

D. Encourage education for judges and support personnel of State court systems.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by an eleven-member Board of Directors appointed by the President, by and with the consent of the Senate. The Board is statutorily composed of six judges, a State court administrator and four members of the public, no more than two of whom can be of the same political party.

II. General Funding Authority

The Institute's program budget for Fiscal Year 1987 is approximately \$6.7 million. Through the award of grants, contracts and cooperative agreements, the Institute is authorized to perform the following activities:

A. Support research, demonstrations, or special projects to improve judicial administration of the State courts, including the provision of technical assistance and training;

B. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

C. Participate in joint projects with other agencies;

D. Evaluate programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving State court judicial administration;

E. Encourage and assist in the furthering of judicial education;

F. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

G. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

III. Eligible Recipients

Congress has given the Institute broad authority to award funds to individuals, groups, and institutions for the purposes of accomplishing the objectives and purposes set forth above. The Institute has been directed by Congress to give priority in awards to State and local courts and their agencies; national nonprofit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments; and national nonprofit organizations providing for the education and training of judges and support personnel of the judicial branch of State governments. See 42 U.S.C. 10705(b)(1).

The Institute also is authorized to make awards to other nonprofit organizations with expertise in judicial administration; institutions of higher education; individuals, partnerships, firms, or corporations; and private agencies with expertise in judicial administration, if the objectives of the funded program can be better served by such a recipient. 42 U.S.C. 10705(b)(2).

Finally, the Institute is authorized to make awards to Federal, State or local agencies and institutions other than courts for services that cannot be provided for adequately through nongovernmental arrangements. 42 U.S.C. 10705(b)(3).

IV. Statutory Program Areas

During its first year of operation, the State Justice Institute will accept concept papers and applications for funding support that address one or more of the areas specified in its enabling legislation. The Board has, however, designated certain program areas as being of "special interest" and encourages interested parties to submit

concept papers and applications in those areas. See Section V below. The experience of the Board in reviewing and approving awards during the first year, and the concept papers, applications, and other information received from interested parties, the general public, and the applicants themselves will shape the Board's priorities in future years.

The State Justice Institute Act authorizes the Institute to fund projects addressing one or more of the following program areas:

(1) Assistance to State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

(2) Education and training programs for judges and other court personnel, for the performance of their general duties and for specialized functions, and national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

(3) Research on alternative means for using judicial and nonjudicial personnel in court decisionmaking activities, implementation of demonstration programs to test such innovative approaches, and evaluations of their effectiveness;

(4) Studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and support to States to implement plans for improved court organization and financing;

(5) Support for State court planning and budgeting staffs and the provision of technical assistance in resource allocation and service forecasting techniques;

(6) Studies of the adequacy of court management systems in State and local courts and implementation and evaluation of innovative response to records management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

(7) Collection and compilation of statistical data and other information on the work of the courts and on the work of other agencies which relate to and affect the work of courts;

(8) Studies of the causes of trial and appellate court delay in resolving cases, and establishing and evaluating experimental programs for reducing case processing time;

(9) Development and testing of methods for measuring the performance of judges and courts, and experiments in the use of such measures to improve the functioning of judges and the courts;

(10) Studies of court rules and procedures, discovery devices, and evidentiary standards to identify problems with the operation of such rules, procedures, devices, and standards.

Development of alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and testing of the utility of those alternative approaches;

(11) Studies of the outcomes of cases in selected areas to identify instances in which the substances of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity; and the development, testing and evaluation of alternative approaches to resolving cases in such problem areas;

(12) Support for programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

(13) Testing and evaluation of experimental approaches to provide increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens; and

(14) Other programs, consistent with the purposes of the Act, as may be deemed appropriate by the Institute, including projects dealing with the relationship between Federal and State court systems in areas where there is concurrent State-Federal jurisdiction and where Federal courts, directly or indirectly, review State court proceedings.

See 42 U.S.C. 10705(c).

It should be emphasized that funds will not be made available for ordinary, routine maintenance and operations of court systems in any of these areas. See Section VII below for other restrictions on the use of Institute funds.

V. Projects of Special Interest

Although applications in any of the foregoing areas are eligible for funding in FY 1987, the Institute is especially interested in funding those proposals that: (1) Go beyond existing arrangements to improve the judiciary; (2) address aspects of the State judicial systems that are in special need of serious attention; and (3) have national significance in terms of their impact or capability of being transferred to and

adopted by other courts and jurisdictions.

A project will be identified as a "special interest" project if it meets the three criteria set forth above and: (1) It falls within the scope of the "special interest" program areas designated below or (2) the concept papers, or other information coming to the attention of the Institute demonstrate that the project responds to a special need or interest of the State courts. The Institute will notify all parties submitting concept papers of whether their submissions were determined to fall within a "special interest" category.

The Board has designated the areas set forth below as "special interest" program categories. The order of listing does not imply any ordering of priorities among the program areas. The Board is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions.

The "special interest" program areas are:

A. Education and training for judges and other key court personnel including the development of innovative training materials and curricula, the improvement of existing court education programs, and the preparation of State court education plans to ensure a comprehensive training program and the effective allocation of limited court education resources.

B. The application of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels including the development of materials to assist judges and court managers in selecting technology appropriate to a court's needs.

C. The implementation and evaluation of programs and procedures designed to substantially reduce expense and delay in litigation at the trial or the appellate level or both. Such programs may include the use of differentiated case processing and other innovative techniques, and the collection, compilation, and analysis of statistical data necessary for determining the causes of unnecessary expense and delay, isolating areas of concern, and evaluating the efficacy of "solutions".

D. The implementation and evaluation of dispute resolution methods that have a substantial likelihood of resolving disputes more fairly, more expeditiously, and less expensively than the traditional judicial process.

E. The implementation and testing of legal and administrative procedures relating to jurors, including those with a substantial likelihood of improving juror use and jury system management,

clarifying juror orientation and instructions, and otherwise simplifying, making fairer, expediting and reducing the cost of the jury process.

F. The implementation and testing of court-based programs and procedures providing fairer treatment for victims of crimes and witnesses in both civil and criminal cases.

G. The implementation and testing of innovative court procedures for handling domestic violence cases effectively and expeditiously.

H. The implementation and evaluation of procedures for effectively imposing, collecting, and enforcing orders to pay fines, restitution, assessments, and other monetary penalties or obligations.

I. The development and implementation of innovative measures to encourage and enhance judicial careers, other than direct increases in salary.

J. Research to develop creative ideas and procedures that could improve the administration of justice in the State courts and at the same time reduce the work burdens of the Federal courts. Such research projects might address innovative State court procedures for:

- Processing complex multistate litigation in State courts;
- Reducing the burdens attendant to Federal habeas corpus cases involving State convictions;
- Facilitating the adjudication of Federal law questions by State courts with appropriate opportunities for review; and
- Otherwise allocating judicial burdens between and among Federal and State courts.

Other areas of research would include studies examining the likely impact of the elimination or restriction of Federal diversity jurisdiction on the State courts, and the factors that motivate litigants to select the Federal or State courts in cases where there is joint jurisdiction.

K. Technical assistance programs to transfer effective programs and procedures in any of the foregoing "special interest" categories to other jurisdictions.

VI. Application Process

A. Overview

The Institute has approximately \$6.7 million available for grants, contracts, and cooperative agreements. These funds were appropriated for fiscal year 1987 and remain available for award until expended. The Institute plans to make awards in two rounds of funding and may also provide financial assistance in the form of interagency agreements with other grantors.

The Board will give serious consideration to grant applications seeking funding in amounts up to \$500,000. Grants in excess of \$500,000 are likely to be rare and to be made, if at all, only for highly promising proposals that will have a significant impact nationally.

The Institute desires to reserve some funds for small grants to support research, studies, and project designs, particularly with respect to the subjects noted in section V (J.) above. Such awards could be funded in amounts up to \$50,000.

Round 1 Funding. Concept papers for Round 1 funding must be received by the Institute no later than April 17, 1987. In May, the Institute will invite parties submitting approved concept papers to submit formal grant applications. Applications must be received by the Institute no later than July 24, 1987. The Institute expects Round 1 awards to be approved in August.

Round 2 Funding. The Institute will initiate the Round 2 funding cycle shortly after the conclusion of Round 1. The specific schedule for Round 2 concept papers and applications will be published at a later date. The Institute will reserve a substantial amount of funds for award in Round 2.

An original and three copies of all concept papers should be submitted to the State Justice Institute, 120 South Fairfax Street, Alexandria, Virginia 22314. The envelope should clearly identify the submissions as a concept paper.

B. Concept Papers

Concept papers are an extremely important part of the application process because they identify "special interest" program areas and permit the Institute to project the nature and amount of grant awards to be made from FY 1987 funds. Because of their importance, the Institute will require all parties requesting financial assistance from the Institute to submit concept papers prior to submitting a formal grant application. This requirement may be waived by the Board only if it determines that extraordinary circumstances exist to justify a waiver.

Concept papers should be double spaced on 8 1/2 x 11 inch paper and be no more than ten pages long.

The papers should contain:

- (1) A statement of the program area, and "special interest" area, if any, addressed by the paper;
- (2) A statement of the need for the project;
- (3) A summary description of the approach to be undertaken;

(4) A statement of the expected products and benefits to be derived from the project;

(5) The identity and qualifications of key staff (if known);

(6) A preliminary budget estimate including a breakdown of anticipated costs for personnel, fringe benefits, travel, equipment, supplies, contracts, indirect costs, and other anticipated major expenditure categories; and

(7) The amount, nature (cash or non-cash), and source of match to be provided (see section VII (C.) below); and

(8) A statement of whether financial assistance for the project has been or will be sought from other sources.

Concept papers will be rated on the basis of the following criteria:

(1) Whether the submitter is to be accorded a statutory priority as discussed in Section III above;

(2) Whether the paper proposes a project in a "special interest" area as discussed in section V above;

(3) The demonstration of need for the project;

(4) The soundness of the approach described;

(5) The demonstration of the project's replicability in other jurisdictions;

(6) The demonstration of the benefits to be derived from the project; and

(7) The reasonableness of the proposed budget.

In determining which submitters will be requested to submit applications, the Institute will also consider the availability of financial assistance from other sources for the project; the anticipated distribution of funding for other projects by type of court and geographical location; and the amount and nature (cash or non-cash) of the submitter's anticipated match.

C. Applications

The Institute expects to publish a proposed Grant Guideline for public comment by April, 1987 and to promulgate a final guideline no later than June, 1987. Applications must be in the form to be specified in the Grant Guideline.

Applicants can begin preparing the narrative portions of their applications now, however. At a minimum, the following elements are to be included in each application:

1. *Project Abstract.* Abstracts of the full proposal should highlight purposes, goals, research methods and the location of the project. These should not exceed one page.

2. *Program Narrative.* A program narrative is the technical portion of the proposal. It should consist of:

—A clear, concise statement of the issues surrounding the problem area to be addressed and of the issues and/or research questions to be explored. A discussion of the relationship of the proposed work to past experience in the field and to the existing literature also is expected.

—A statement of the project's anticipated contribution to the improvement of State court administration policy or practice in both the jurisdiction in question and other jurisdictions.

—A detailed statement of the elements of the proposed program, training or research design. Delineate carefully and completely the specific components of the project or program.

If a research project, the applicant should specify the data sources, data collection strategies, variables to be examined, and analytical procedures to be employed. If a training project, the applicant should discuss the nature and size of the intended audience, the costs to users or participants, the training methods and materials to be developed, and the manner of their development.

If the cooperation of agencies other than the applicant is required or proposed, written assurances of cooperation and availability should be attached.

—The organization and management plan for the conduct of the program or study. Include a list of major events, activities, products, and other milestones including a timetable for their completion and the time commitments of key staff to individual project tasks. All grant activities should generally be completed within 24 months. Requests for longer periods must demonstrate that the required tasks cannot be completed within two years.

The Program Narrative should not exceed 25 double-spaced 8½ x 11 inch pages.

3. *Budget Narrative.* This narrative should provide detailed information concerning the salaries, materials, and cost assumptions used to estimate project costs. Narratives and cost estimates should be presented under the following standard budget categories: personnel, fringe benefits, travel, equipment, supplies, contracts, other, and indirect costs. For each category, the basis upon which costs have been calculated should be explained. These estimates should cover the total period of the award except for projects to be funded in phases. Projects applying for phased funding should estimate

aggregate costs envisioned in subsequent phases.

4. *Capability.* Institutional capabilities of the recipient to conduct the work proposed should be briefly discussed and biographical sketches or vitae of the key project staff appended. Applicants must also demonstrate why they are eligible recipients in this section and into which category of recipient they fall. (See section VII (B.) below.)

5. *Application for Funds from Other Grantors.* The applicant should state whether or not funding for the project or a similar project has been or will be sought from other Federal agencies or private grantors. If funding has been or will be sought, the applicant should state the date, amount sought, and identity of the grantor to which the application has been or will be submitted.

Applications will be rated on the basis of the following criteria:

(1) Whether the applicant is to be accorded a statutory priority as discussed in section III above;

(2) Whether the application proposes a project in a "special interest" area as discussed in section V above;

(3) The demonstration of need for the project;

(4) The soundness of the methodology described;

(5) The demonstration of the project's replicability in other jurisdictions;

(6) The demonstration of the benefits to be derived from the project;

(7) The demonstration of cooperation and support of other organizations and agencies that may be affected by the project;

(8) The qualifications of the project's staff;

(9) The applicant's management plan and capabilities; and

(10) The reasonableness of the proposed budget.

In determining which applications to fund, the Institute will also consider the availability of financial assistance from other sources for the project; the anticipated distribution of funding for other projects by type of court and geographical location; the amount and nature (cash or non-cash) of the submitter's anticipated match; and the degree of commitment demonstrated by those responsible for providing the match.

VII. General Limitations and Conditions

Potential applicants should be aware of certain limitation and conditions on grants, contracts and cooperative agreements that are contained in the

State Justice Institute Act. These limitations and conditions will be described in more detail in the Grant Guidelines to be published at a later date. In general, however, the following conditions must be met:

A. State and Local Court Systems. Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The latter shall receive, administer, and be accountable for all funds awarded to such courts. 42 U.S.C. 10705(b)(4).

B. Priority Recipients. Applicants will be expected to justify in their applications the extent to which they meet the criteria for funding priority described in section III above, and, in the case of applicants who are not entitled to the priority established by section 10705(b)(2), to explain why they will be better able to accomplish the objectives of the proposed program than an applicant designated as a priority recipient. Governmental applicants other than courts must also explain why the proposed program could not be adequately provided through nongovernmental organizations.

C. Matching Requirements. All awards to State or local judicial systems will require a match from private or public sources of not less than 50 percent of the total cost of the award. The Institute will give preference to those applicants who provide a cash match to the Institute's award.

The requirement to provide match may be waived in exceptionally rare circumstances upon approval of the Chief Justice of the highest court in the State and a majority of the Board of Directors.

D. Lobbying. Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive orders or similar promulgations by Federal, State or local agencies, nor to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

E. Political Activities. No recipient shall contribute or make available Institute funds, program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office. Similar prohibitions exist against using funds in advocating or opposing any ballot measure, initiative, or referendum. Finally, officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any

candidate for public or party office. 42 U.S.C. 10706(a).

F. Advocacy. No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

G. Supplantation and Construction. To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

- To supplant State or local funds supporting a program or activity; or
- To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program.

H. Refunding of Applications. Unless the terms of an award expressly obligate the Institute to approve refunding a project in a subsequent time period, no application submitted by a recipient that seeks further funding from the Institute for another project shall be entitled to treatment as an application for refunding for the purposes of 42 U.S.C. 10706(a)(3) or 42 U.S.C. 10708.

I. Audit. The Institute shall conduct, or require each recipient to provide for, an annual fiscal audit.

State Justice Institute, Board of Directors
 Clement Clay Torbert, Jr., Chairman, Chief Justice, Supreme Court of Alabama
 Rodney A. Peoples, Vice Chairman, Resident Judge, Second Judicial Circuit, South Carolina
 John F. Daffron, Jr., Secretary, Judge, Chesterfield, Virginia Circuit Court
 James Duke Cameron, Justice, Supreme Court of Arizona
 Lawrence H. Cooke, White, Brenner, and Feigenbaum, Albany, New York
 Janice Gradwohl, Judge, County Court, Lincoln, Nebraska
 Daniel J. Meador, Professor of Law, University of Virginia Law School
 Sandra A. O'Connor, States Attorney of Baltimore County, Towson, Maryland
 Larry P. Polansky, Executive Officer, District of Columbia Courts

David I. Tevelin,
 Executive Director.

[FR Doc. 87-4791 Filed 3-6-87; 8:45 am]

BILLING CODE 6820-SC-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending February 27, 1987

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 44698 R-1 & R-2

Parties: Members of International Air Transport Association
Date Filed: February 25, 1987
Subject: TC2 Cargo Rates
Proposed Effective Date: March 1, 1987

Docket No. 44699

Parties: Members of International Air Transport Association
Date Filed: February 25, 1987
Subject: Revalidating TC1 Longhaul Fares
Proposed Effective Date: April 1, 1987

Docket No. 44700

Parties: Members of International Air Transport Association
Date Filed: February 25, 1987
Subject: Proportional Rates for CEBU
Proposed Effective Date: April 1, 1987

Docket No. 44701 R-1-R-3

Parties: Members of International Air Transport Association
Date Filed: February 25, 1987
Subject: Student Fares Japan-China
Proposed Effective Date: April 1, 1987

Phyllis T. Kaylor,
 Chief, Documentary Services Division.
 [FR Doc. 87-4871 Filed 3-6-87; 8:45 am]

BILLING CODE 4910-62-M

Research and Special Programs Administration

[Notice No. 87-2]

Availability of Proposals for Revisions to the International Atomic Energy Agency Regulations and Request for Public Comment

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of availability and request for comment.

SUMMARY: The International Atomic Energy Agency's (IAEA) catalog of proposed amendments of IAEA Safety Series No. 6, entitled "Regulations for the Safe Transport of Radioactive Materials," and its supporting documents, Safety Series Nos. 7, 37, and 80, is available for public review and comment.

DATE: Comments should be received by April 1, 1987.

ADDRESS: The IAEA catalog of proposed amendments is available for review in the Dockets Branch, Office of Hazardous Materials Transportation, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, Room 8426, 10:00-4:00, Monday through Friday. Additionally, comments on the catalog should be addressed to the Dockets Branch at the same address.

FOR FURTHER INFORMATION CONTACT: Michael E. Wangler, Office of Hazardous Materials Transportation, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, (202) 366-4545.

SUPPLEMENTARY INFORMATION: Many countries and international transport organizations throughout the world have adopted the standards of the IAEA's "Regulations for the Safe Transport of Radioactive Materials" (IAEA Regulations). The DOT Hazardous Materials Regulations (Subchapter C of 49 CFR; HMR) permit the import and export of radioactive materials, under certain conditions, if packages are prepared for shipment in accordance with the IAEA Regulations. The HMR are periodically amended to allow conformance with most of the IAEA Regulations for domestic transportation.

The IAEA has instituted a new process for the continuing review and revision of its regulations. This process will lead to supplements to the IAEA Regulations and its supportive documents being issued every 2 years, thereby allowing the IAEA Regulations to remain current with technology and needs.

To institute this new process, in August 1986 the IAEA notified its member states of its proposal to review and revise the "Regulations for the Safe Transport of Radioactive Materials," Safety Series No. 6 (SS6), and its supporting documents, Safety Series Nos. 7, 37, and 80. The latest edition of SS6 was issued in 1985 following a 6-year comprehensive review. A supplement to SS6 was issued in 1986. The IAEA proposal requested that member states submit suggestions for changes to the IAEA Regulations or its supporting documents. As a result of this notification the IAEA received a large number of proposed amendments to SS6. The IAEA has catalogued the proposed amendments and by letter dated January 13, 1987 transmitted them to its member states for review and comment. Member state comments will be considered by the Review Panel of the IAEA charged with revising the IAEA Regulations. The DOT as a

member of the Review Panel will be reviewing the IAEA catalog of proposed amendments.

Since this catalog, through amendment of SS6, may have an effect on the HMR, the public is invited to review it and to submit comments on the proposed changes. To facilitate this process, a copy has been placed in DOT's Dockets Branch for use by the public. Additionally, copies of the proposed amendments may be obtained upon request to the Dockets Branch. All public comments received by DOT will be considered and included, as appropriate, during its activities with the IAEA Review Panel. Issued in Washington, DC on Mar. 3, 1987 under authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 87-4814 Filed 3-8-87; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to section 10 of Pub. L. 92-463, that a meeting will be held at the Federal Reserve Bank of New York on March 31, 1987 of the following debt management advisory committee: Public Securities Association, U.S. Government and Federal Agencies, Securities Committee.

The agenda for the Public Securities Association U.S. Government and Federal Agencies Securities Committee meeting provides for a working session on March 31 and the preparation of a written report to the Secretary of the Treasury.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Pub. L. 92-463, and vested in me by Treasury Department Order 101-5, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c)(4) and (9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several

major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Pub. L. 92-463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552b(c)(4) of Title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by section 552b(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of Title 5 of the United States Code.

Dated: March 3, 1987.

Charles O. Sethness,

Assistant Secretary (Domestic Finance).

[FR Doc. 87-4864 Filed 3-8-87; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35), agencies are required to submit proposed or established reporting and record keeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the Agency has made such a

submission. USIA is required to conduct Teacher Exchange Programs in accordance with the Fulbright-Hays Act Pub. L. 87-256). USIA is requesting approval of the extension of a program OMB 3116-0181, which provides opportunities for U.S. teachers to exchange positions for an academic year with foreign counterparts or to attend one of a number of short term seminars abroad on a variety of topics. Respondents will be required to respond only one time.

DATE: Comments must be received by March 31, 1987.

Copies: Copies of the Request for Clearance (SF-83), supporting Statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Retta Graham-Hall, United States Information Agency, M/AS, 301 Fourth St., SW., Washington, D.C. 20547. Telephone (202) 485-7501, and OMB review: Francine

Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Bldg., Washington, DC 20503. Telephone (202) 395-7340.

SUPPLEMENTARY INFORMATION: Title: "Fulbright Teacher Exchange Program". **ABSTRACT:** This information collection is intended to facilitate the administration of academic-year exchanges and short-term seminar programs to educators in order to broaden the educators' understanding of other countries and cultures. This understanding, in turn, is expected to be shared with students, colleagues, members of civic and professional organizations and other interested parties in the educators' respective communities here and abroad, thereby promoting mutual understanding and contributing to the academic excellence of participating institutions.

Proposed Frequency of Responses:
No. of Respondents—1,500
Recordkeeping Hours—208.7
Total Annual Burden—1,708.7

Dated: March 2, 1987.

Charles N. Canestro,
Federal Register Liaison.

[FR Doc. 87-4813 Filed 3-6-87; 8:45 am]

BILLING CODE 8230-01-M

Meeting; United States Advisory Commission on Public Diplomacy

The United States Advisory Commission on Public Diplomacy will conduct a meeting in Room 600, 301 4th Street, SW., on March 11 from 10:00 am to 12:30 pm.

The meeting will be closed to the public because it will involve a discussion of classified information relating to U.S.-USSR media reciprocity policies and current developments in the Soviet Union. (5 U.S.C. 552b(c)(1)) Premature disclosure of this information is likely to significantly frustrate implementation of proposed Agency action, because there will be a discussion of future Agency policy and programs. (5 U.S.C. 522b(c)(9)(B))

Please call Gloria Kalamets, (202) 485-2468 for further information.

Dated: March 4, 1987.

Charles Z. Wick,

Director.

[FR Doc. 87-4870 Filed 3-6-87; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register

Vol. 52, No. 45

Monday, March 9, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CIVIL RIGHTS COMMISSION

PLACE: 1121 Vermont Avenue, NW., Room 512, Washington, DC 20425.

DATE AND TIME: Friday, March 13, 1987, 9:00 a.m.-5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

- I. Approval of Agenda
- II. Approval of Minutes of Last Meeting
- III. Staff Director's Report
 - A. Status of Earmarks
 - B. Personnel Report
 - C. Activity Report
- IV. D.C. SAC Recharter Package
- V. Administrative Instruction on Monitoring
- VI. Report of Commission Subcommittee re Proposed Projects
- VII. Presentations by SAC Chairs

PERSON TO CONTACT FOR FURTHER

INFORMATION: Thomas Olsen, Press and Communications Division, (202) 376-8105.

William H. Gillers,

Solicitor, 376-8514.

[FR Doc. 87-4916 Filed 3-4-87; 4:48 pm]

BILLING CODE 6335-01-M

COMMODITY FUTURES TRADING COMMISSION

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 6423.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 11:30 a.m., March 10, 1987.

CHANGE IN THE MEETING: The closed meeting to discuss Enforcement Matters has been cancelled.

CONTACT PERSON FOR MORE

INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-5007 Filed 3-5-87; 2:58 pm]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, March 11, 1987.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

General Policy Statement

The Commission will consider a proposed statement of General Policy concerning the structure and workings of the Commission staff and the flow of information within the Agency.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Sheldon D. Butts,
Deputy Secretary.

March 5, 1987.

[FR Doc. 87-4963 Filed 3-5-87; 12:32 pm]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, March 12, 1987.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

FY '89 Planning Issue Topics

The staff will brief the Commission on Fiscal Year 1989 planning issue topics.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Sheldon D. Butts,
Deputy Secretary.

March 5, 1987.

[FR Doc. 87-4964 Filed 3-5-87; 12:32 pm]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Friday, March 13, 1987.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Cost Benefit Analysis

The staff will brief the Commission on the use of cost benefit analysis and other

economic considerations in carrying out its compliance and enforcement activities.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Sheldon D. Butts,
Deputy Secretary.

March 5, 1987.

[FR Doc. 87-4965 Filed 3-5-87; 12:32 pm]

BILLING CODE 6355-01-M

FEDERAL ENERGY REGULATORY COMMISSION

March 4, 1987.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: March 11, 1987, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20424.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE

INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 852nd Meeting— March 11, 1987, Regular Meeting (10:00 a.m.)

CAP-1.

Project No. 9401-004, Halecrest Company

CAP-2.

Project No. 4182-008, Shorock Hydro, Inc.

CAP-3.

Project No. 5927-007, Synergics, Inc.

CAP-4.

Project No. 3407-007, Cook Electric, Inc.

CAP-5.

Project No. 8686-001, Northeast

Hydrodevelopment Corporation

CAP-6.

Docket No. UL-87-3-001, Fairfax County

Water Authority

CAP-7.

- Project No. 5903-001, Black Canyon, Gem and Rideview Irrigation Districts of Idaho and Oregon
- CAP-8.
Project No. 8050-001, Westmoreland County, Pennsylvania, Loyalhanna Township, Pennsylvania and Pennsylvania Renewable Resources, Inc.
Project No. 7586-000, American Hydro Power Company
- CAP-9.
Project No. 7353-003, Truckee Donner Public Utility District
- CAP-10.
Omitted
- CAP-11.
Project No. 2113-012, Wisconsin Valley Improvement Company
- CAP-12.
Project Nos. 6902-003 and 004, city of New Martinsville, West Virginia
Project No. 9999-000, city of St. Marys, West Virginia
- CAP-13.
Docket No. E-6454-007, city of Centralia, Washington
- CAP-14.
Project No. 3555-001, city of Broken Bow
Project No. 8074-000, RedArk Development Authority
- CAP-15.
Project No. 6484-000, Feldspar Energy Corporation
Project Nos. 8515-000 and 001, SNC Hydro, Inc. and Adirondack Hydro, Inc.
Project No. 7567-000, city of Rome, New York
- CAP-16.
Docket Nos. ER87-105-004, ER87-106-004 and 005, Appalachian Power Company
- CAP-17.
Docket No. ER86-558-010, Gulf States Utilities Company
- CAP-18.
Docket No. ER87-93-001, Central Power and Light Company and West Texas Utilities Company
- CAP-19.
Docket Nos. ER87-115-000 and ER87-223-000, Southwestern Electric Power Company
- CAP-20.
Docket No. ER86-684-001, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, GPU Service Corporation and Niagara Mohawk Power Corporation
- CAP-21.
Docket No. ER87-24-001, Utah Power & Light Company
- CAP-22.
Docket No. ER87-169-000, Public Service Company of Indiana, Inc.
- CAP-23.
Omitted
- CAP-24.
Omitted
- CAP-25.
Docket Nos. ER86-7-000, ER86-22-000, ER86-233-000, ER86-351-000 and ER86-551-000, Portland General Electric Company
- CAP-26.
Docket No. QF83-196-001, Big Horn Energy Partners
- CAP-27.
Docket Nos. ER86-76-001, 002, 006, 007, 009, ER86-230-001, 004 and 005, Commonwealth Edison Company
- CAP-28.
Docket No. ER86-354-001, Niagara Mohawk Power Corporation
- CAP-29.
Docket No. ER895-689-004, Holyoke Water Power Company and Holyoke Power & Electric Company
Docket No. ER85-707-001, Western Massachusetts Electric Company
Docket No. ER85-720-001, Connecticut Light and Power Company
- Consent Miscellaneous Agenda*
- CAM-1.
Docket No. RM87-6-000, Fees for Hydroelectric Project Applications to Reimburse Fish and Wildlife Agencies
- CAM-2.
Docket No. RM87-4-000, Rate Changes Relating to Federal Corporate Income Tax Rate for Public Utilities
- CAM-3.
Docket No. RM79-76-251 (Texas 16 Addition II), High-Cost Gas Produced From Tight Formations
- Consent Gas Agenda*
- CAG-1.
Docket Nos. TA87-51-000, and 001, Great Lakes Gas Transmission Company
- CAG-2.
Docket No. TA87-1-37-003, Northwest Pipeline Corporation
- CAG-3.
Docket No. RP86-119-006, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
- CAG-4.
Omitted
- CAG-5.
Omitted
- CAG-6.
Docket No. RP86-165-001, Kentucky West Virginia Gas Company
- CAG-7.
Docket No. TA87-1-7-000, Southern Natural Gas Company
- CAG-8.
Docket No. RP86-14-017, Columbia Gulf Transmission Company
Docket No. RP86-15-017, Columbia Gas Transmission Corporation
- CAG-9.
Omitted
- CAG-10.
Docket No. RP86-136-003, National Fuel Gas Supply Corporation
- CAG-11.
Docket Nos. ST86-1599-000, ST86-1601-000, ST86-1603-000, ST86-1643-000, ST86-1933-000, ST86-1937-000, ST86-1965-000, ST86-2265-000, ST86-2317-000, ST86-2323-000 and ST86-773-000, *et al.*, Delhi Gas Pipeline Corporation
- CAG-12.
Docket Nos. ST86-2319-000 and ST82-356-000, *et al.*, Delhi Gas Pipeline Corporation
- CAG-13.
Docket Nos. ST86-2320-000 and ST84-803-000, *et al.*, Delhi Gas Pipeline Corporation
- CAG-14.
Docket Nos. ST87-112-000, ST87-113-000, ST87-121-000, ST87-122-000, ST86-A1589-000, ST86-1597-000, ST86-1602-000, ST86-1934-000, ST86-2318-000, ST86-2321-000 and ST86-2681-000, *et al.*, Delhi Gas Pipeline Corporation
- CAG-15.
Docket No. IS87-5-000, Amerada Hess Pipeline Corporation
Docket No. IS87-6-000, ARCO Pipe Line Company
Docket No. IS87-7-000, BP Pipeline, Inc.
Docket No. IS87-8-000, Exxon Pipeline Company
Docket No. IS87-9-000, Mobile Pipeline Company
Docket No. IS87-10-000, Phillips Alaska Pipeline Company
Docket No. IS87-11-000, Sohio Pipe Line Company
Docket No. IS87-12-000, Unocal Pipeline Company
- CAG-16.
Docket No. IS86-1-000, Milne Point Pipe Line Company
- CAG-17.
Docket Nos. CI86-637-001, 002, 003 and CI86-638-000, ANR Pipeline Company
Docket Nos. CI86-641-001 and CI86-642-000, Northwest Pipeline Corporation and Northwest Marketing Company
Docket Nos. CI86-370-001 and CI86-373-001, Texas Gas Transmission Corporation
Docket Nos. CI86-378-000 and CI86-397-000, Arkla, Inc. (Exploration and Production Division) and Arkla Energy Marketing Company
Docket Nos. CI86-375-000 and CI86-408-000, Trunkline Gas Company
Docket Nos. CI86-447-00 and CI86-450-000, United Gas Pipeline Company
Docket Nos. CI86-451-000 and CI86-504-000, Natural Gas Pipeline Company of America
Docket Nos. CI86-510-000 and CI86-513-000, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
Docket Nos. CI86-737-000 and CI86-738-001, Arkla Energy Resources
- CAG-18.
Docket No. CP85-636-003 and CP85-775-003 Northern Natural Gas Company, Division of Enron Corporation
- CAG-19.
Docket Nos. CP86-179-008, 009, 010, CP74-192-009, 010 and CP86-704-000, Florida Gas Transmission Company
- CAG-20.
Docket Nos. CP86-375-001 and CP86-438-000, Natural Gas Pipeline Company of America
Docket Nos. CP86-679-000 and 002, Interstate Power Company
- CAG-21.
Docket Nos. CP84-132-003, CP84-133-002, CP84-134-002 and CP84-196-003, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
Docket Nos. CP84-132-002 and CP84-196-002, Columbia Gulf Transmission Company
- CAG-22.
Docket No. CP86-575-000, The Inland Gas Company, Inc.

- CAG-23.
Docket No. CP86-581-000, Texas Gas Transmission Corporation
- CAG-24.
Docket No. CP87-18-000, Columbia Gulf Transmission Company
- CAG-25.
Docket No. CP85-918-000, The Inland Gas Company, Inc.
- CAG-26.
Docket No. CP86-579-000, Natural Gas Pipeline Company of America
- CAG-27.
Docket No. CP86-238-000, K N Energy, Inc.
- CAG-28.
Docket No. CP86-593-000, Natural Gas Pipeline Company of America
- CAG-29.
Docket No. CP86-576-000, Natural Gas Pipeline Company of America
- CAG-30.
Docket No. CP86-571-000, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
- CAG-31.
Docket No. CP85-186-000, Valero Interstate Transmission Company
- CAG-32.
Docket No. CP86-283-000, Columbia Gas Transmission Corporation

I. Licensed Project Matters

- P-1.
Reserved

II. Electric Rate Matters

- ER-1.
Docket No. ER87-97-001, Pacific Gas and Electric Company. Order concerning Western Systems Power Pool experiment.
- ER-2.
Docket Nos. ER81-749-003 and ER82-325-002 (Phase I), Montaup Electric Company. Opinion on initial decision concerning undue discrimination, demand ratchets and CWIP.
- ER-3.
Docket No. ER84-579-006, AEP Generating Company
Docket No. EL86-10-001, Kentucky Power Company. Opinion on initial decision concerning rights and obligations regarding capacity additions on the American Electric Power System.
- ER-4.
Docket No. EL86-34-000, San Diego Gas and Electric Company v. Alamito Company, Osceola Energy, Inc. and Alamito Holdings, Inc.
Docket No. EL86-36-000, Alamito Company Shareholder v. Alamito Company. Order concerning jurisdiction in connection with a merger transaction.
- ER-5.
Docket No. QF87-237-000, CMS Midland, Inc. Order concerning application for certification as a qualifying cogeneration facility.

Miscellaneous Agenda

- M-1.
Reserved
- M-2.
Reserved
- M-3.

Docket No. RM87-11-000, Proposed Test for Affiliated Entities Limitation Under section 601(b)(1)(E) of Natural Gas Policy Act of 1978

I. Pipeline Rate Matters

- RP-1.
Omitted
- RP-2.
Docket No. RP84-76-000, Alabama-Tennessee Natural Gas Company. Opinion on initial decision concerning cost allocation and rate design, rate of return and capital structure, and sole supplier provision.
- RP-3.
Docket Nos. RP86-52-006, 007 and RP86-109-003, Kentucky West Virginia Gas Company. Order on contested Order No. 436 settlement.

II. Producer Matters

- CI-1.
Docket No. RI87-1-000, Exxon Corporation. Exxon Corporation's request for declaratory order concerning deferral of gas costs in excess of market price.

III. Pipeline Certificate Matters

- CP-1.
Docket No. CP86-531-000, Texas Gas Transmission Corporation. Request for section 7(c) authorization to transport for 106 shippers.
- CP-2.
Docket No. TC82-43-000, K N Energy, Inc. Request for a declaratory order on jurisdiction over an interruption of service.
- CP-3.
Docket No. CP85-437-005, *et al.*, Mojave Pipeline Company, *et al.* Interlocutory appeal of an administrative law judge's discovery ruling.
- CP-4.
Docket No. RP87-7-004, Transcontinental Gas Pipe Line Corporation
Docket No. RP87-15-007, Trunkline Gas Company. Interlocutory appeal of an administrative law judge's discovery ruling.
- CP-5.
Omitted
- Kenneth F. Plumb,**
Secretary.
[FR Doc. 87-5014 Filed 3-5-87; 3:53 pm]
BILLING CODE 6717-01-M

NATIONAL SCIENCE BOARD

DATE AND TIME: March 20, 1987.

8:30 a.m. Closed Session
8:45 a.m. Open Session

PLACE: National Science Foundation, Washington, DC

STATUS: Most of this meeting will be open to the public. Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED MARCH 20:

Closed Session (8:30-8:45 a.m.)

1. Minutes—February 1987 Meeting
2. NSB and NSF Staff Nominees
3. Alan T. Waterman Award

4. Grants, Contracts, and Programs

Open Session (8:45-11:30 a.m.)

5. Grants, Contracts and Programs
6. Chairman's Report
7. Minutes—February 1987 Meeting
8. Director's Report
9. Annual Report on NSF Use of Peer Review
10. Proposed NSB Issues
11. Plans for National Science & Technology Week
12. Issues in Atmospheric Chemistry
13. Other Business

Thomas Ubois,

Executive Officer.

[FR Doc. 87-5013 Filed 3-5-87; 3:44 p.m.]

BILLING CODE 7555-01-M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1382]

TIME AND DATE: 10 a.m. (EST),
Wednesday, March 11, 1987.

PLACE: TVA West Tower Auditorium,
400 West Summit Hill Drive, Knoxville,
Tennessee.

STATUS: Open.

AGENDA

Approval of minutes of meeting held on
February 19, 1987.

Discussion Item

1. TVA Waste Management Institute.

Action Items

New Business

A—Budget and Financing

A1. Retention of Net Power Proceeds and Nonpower Proceeds and Payments to the U.S. Treasury in March 1987, Pursuant to Section 26 of the TVA Act.

A2. Modification of Fiscal Year 1987 Capital Budget Financed from Power Proceeds and Borrowings—Construct Air Preheater Wash Chemical Treatment Pond at Paradise Fossil Plant.

B—Purchase Awards

B1. Negotiation LF-839241—Replacement of High-Pressure Cooling Injection Turbine Controls Components for Browns Ferry Nuclear Plant Units 1, 2, and 3.

*B2. Amendment to Indefinite Quality Term Contract 85P07-955485 with Raychem Corporation for Class 1E High and Low Voltage Heat-Shrinkable Materials and Accessories for All Nuclear Plants.

B3. Negotiation CA-40619A—Replacement Furnace Wall and Roof Panels for Widows Creek Fossil Plant "B".

C—Power Items

C1. Supplement No. 3 to Cooperative Agreement No. TV-64017A with University of Louisville Research Foundation, Inc., for Atmospheric Fluidized Bed Combustion Technology Development.

C2. Letter Agreement with Champion International Corporation Providing for Loop-Line Service Arrangements to Champion's Pulp and Paper Mill Near Courtland, Alabama.

C3. Proposed Storage Water Heater Demonstration Project and Form Agreement Covering Distributor Participation.

C4. Proposal to Revise the Economy Surplus Power Program which is Currently Being Offered to TVA's Directly Served Customers on an Experimental Basis.

D—Personnel Items

D1. Resolution Delegating Authority to the General Manager to Approve Reimbursement of Certain Moving Expenses for New Appointees.

D2. Supplement No. 9 to Personal Services Contract No. TV-616648A with Massachusetts Institute of Technology, Cambridge, Massachusetts, for Groundwater Transport Study, Requested by Office of Natural Resources and Economic Development.

D3. Supplement No. 6 to Personal Services Contract No. TV-63868A with Praxis Engineers, Inc., Milpitas, California, for Development of a Coal Preparation Process Control System, Requested by the Office of Power.

D4. Personal Services Contract with Black & Veatch, Kansas City, Missouri, for General Engineering, Design, and Architectural Services Related to TVA's Fossil-Hydro Power Plants, Electrical Transmission/Distribution Systems and Communication Systems, Requested by the Office of Power.

D5. Supplement No. 4 to Personal Services Contract No. TV-67873A with Consultants & Designers, Inc., New York, New York for Provision of Engineering and Related Services, Requested by Office of Nuclear Power.

D6. Supplement No. 4 to Personal Services Contract No. TV-67873A with AiDE Management Resources Corporation, Richmond, Virginia, for Provision of Engineering and Related Services, Requested by Office of Nuclear Power.

D7. Supplement No. 3 to Personal Services Contract No. TV-67875A with CDI Corporation, Philadelphia, Pennsylvania, for Provision of Engineering and Related Services, Requested by Office of Nuclear Power.

D8. Supplement No. 4 to Personal Services Contract No. TV-67903A with American Technical Associates, Inc., Knoxville, Tennessee, for Provision of Engineering and Related Services, Requested by Office of Nuclear Power.

D9. Supplement No. 5 to Personal Services Contract No. TV-65375A with Bechtel North American Power Corporation, Gaithersburg, Maryland, Providing for Performance of General Engineering, Design, and Architectural Services Related to TVA's Nuclear, Fossil, and Hydro Power Plants, Requested by Office of Nuclear Power.

D10. Supplement No. 4 to Personal Services Contract No. TV-66821A with General Electric Company, Atlanta, Georgia, Providing for Services in Connection with the Implementation of the Regulatory Performance Improvement Plan for the Browns Ferry Nuclear Plant, Requested by Office of Nuclear Power.

D11. Supplement No. 3 to Personal Services Contract No. TV-69324A with Stone & Webster Engineering Corporation, Boston, Massachusetts, for Engineering, Construction and Operation Support Services, Requested by Office of Nuclear Power.

D12. Supplement No. 3 to Personal Services Contract No. TV-65787A with Merz and McLellan, Consulting Engineers, Newcastle Upon Tyne, England, for Performance of Source Inspection Services When Required on TVA-Purchased Equipment Being Manufactured in Europe.

D13. Employee Loan Agreement with GPU Nuclear Corporation.

E—Real Property Transactions

E1. Abandonment of Unused Easement Rights Affecting Portions of the Union City-Tiptonville 69-kV Transmission Line Right-of-Way Located in Obion County, Tennessee—Tracts UCT-43 and -44.

E2. Filing of Condemnation Cases.

F—Unclassified

F1. Supplement No. 3 to Interagency Agreement No. TV-67769A with U.S. Army Engineers Waterways Experiment Station, Corps of Engineers, for Evaluation and Testing of Existing Methods and Materials for Spall Repair of Wet Concrete Surfaces Under the Repair, Evaluation, Maintenance, and Rehabilitation Research Program.

F2. Supplement No. 2 to Interagency Agreement No. TV-65528A with United States Department of the Interior, Bureau of Reclamation for Inspection Services.

F3. Supplement No. 3 to Contract No. TV-68516A with U.S. Department of Energy Covering Arrangements for Cooperation in a Project To Determine Influence of Ozone, Acidic Precipitation, and Soil Magnesium Level on the Growth of Loblolly Pine Under Field Conditions.

*Items approved by individual Board Members. This would give formal ratification to the Board's action.

CONTACT PERSON FOR MORE

INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: March 4, 1987.

W.F. Willis, General Manager.

[FR Doc. 87-4927 Filed 3-5-87; 9:13 am]

BILLING CODE 8120-01-M

Corrections

Federal Register

Vol. 52, No. 45

Monday, March 9, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 84N-0150]

Confirmation of Effective Date for D&C Green No. 6; Uniform Specifications

Correction

In rule document 87-1003 appearing on page 1902 in the issue of Friday, January 16, 1987, the docket number should read as it does in the headings above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 77N-0240; DESI 12836]

Dipyridamole; Drugs for Human Use; Drug Efficacy Study Implementation; Revocation of Exemption, Followup Notice and Opportunity for Hearing

Correction

In notice document 87-857 beginning on page 1663 in the issue of Thursday, January 15, 1987, make the following corrections:

1. On page 1664, in the first column, in paragraph 27, in the third line, "Hasey" should read "Halsey";
2. On the same page, in the same column, in paragraph 28, in the third line, "Hasey" should read "Halsey";
3. On the same page, in the same column, in paragraph 29, in the first line, "87-929" should read "87-829";

4. On the same page, in the second column, in paragraph 49, in the first line, "88-25" should read "88-512"; and

5. On page 1865, in the third column, in the third complete paragraph, in the eighth line, "along" should read "alone".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Salinomycin

Correction

In rule document 87-854 appearing on page 1626 in the issue of Thursday, January 15, 1987, make the following correction:

In the third column, in amendatory item 2, in the first line, "559.550" should read "558.550".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 23, 36, 91, and 135

[Docket No. 23516; Amdt. Nos. 21-59, 23-34, 36-13, 91-197 and 135-21]

Airworthiness Standards and Operating Rules; Commuter Category Airlines

Correction

In rule document 87-754 beginning on page 1806 in the issue of Thursday, January 15, 1987, make the following corrections:

1. On page 1807, in the first column, in the first complete paragraph, in the 10th line, "commits" should read "comments".
2. In the same column, in the second complete paragraph, in the fifth line, "certificated" was misspelled.
3. On page 1811, in the third column, in the 20th line, "\$25.53(c)" should read "\$23.53(c)".
4. In the same column, in the second complete paragraph, in the ninth line, insert "is" before "reached".

5. On page 1813, in the third column, in the third complete paragraph, the first word in the second sentence should read "As" and the first word in the third sentence should read "A".

6. On page 1814, in the second column, in the second complete paragraph, "\$23.121(d)" should read "\$25.121(d)".

7. On page 1815, in the second column, in the second complete paragraph, in the 21st through 23rd lines, remove "of weight and center of gravity within the range of loading conditions".

8. On the same page, in the third column, in the fifth complete paragraph, in the 24th line, insert "was" after "CAR 3".

9. In the same paragraph, in the last line, "airplane" was misspelled.

10. On page 1816, in the first column, in the 11th line, "of" should read "for".

11. On the same page, in the second column, in the last paragraph, in the 15th line, "excluding" was misspelled.

12. On the same page, in the third column, in the first complete paragraph, in the eighth line, "identified" was misspelled.

13. In the same column, in the third complete paragraph, in the 30th line, "extinguishing" was misspelled.

14. On page 1817, in the first column, in the first complete paragraph, in the 31st line, "marking" was misspelled.

15. On page 1819, in the first column, in the fifth complete paragraph, in the 15th line, after "airplanes" and before the period, insert "lists the need for more stringent fire-protection systems for small airplanes".

16. On page 1821, in the first column, in the second complete paragraph, in the 12th line, "test" should read "text".

17. On the same page, in the second column, in the second complete paragraph, "requirement" was misspelled.

§ 23.67 [Corrected]

18. In §23.67(e)(3), on page 1828, in the first column, in the fourth line, "Vs4" should read "Vs1".

19. On the same page, in the second column, in amendatory instruction 17, in the second line, "test" should read "text".

§ 23.443 [Corrected]

20. On page 1830, in the first column, in §23.443(b), in the ninth line, "the" should read "The".

§ 23.1201 [Corrected]

21. On page 1833, in the second column, in §23.1201(a), in the first line, "Material" should read "No material".

22. On page 1835, in the third column, in amendatory instruction 65, "(January 15, 1987)" should read "February 17, 1987" both times it appears.

23. On page 1836, in the first column, in amendatory instruction 68, remove "and" before "after".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Airspace Docket No. 87-AWP-2]

Alteration of VOR Federal Airways*Correction*

In rule document 87-4055 beginning on page 5947 in the issue of Friday, February 27, 1987, make the following correction:

§ 71.123 [Corrected]

On page 5948, in the first column, the last line should read "By removing 'and R-2520'".

BILLING CODE 1505-01-D

Reader Aids

Federal Register

Vol. 52, No. 44

Monday, March 9, 1987

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LIST OF PUBLIC LAWS**Last List February 18, 1987**

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.J. Res. 3/Pub. L. 100-7

To recognize the 100th anniversary of the enactment of the Hatch Act of March 2, 1887, and its role in establishing our Nation's system of State agricultural experiment stations. (Mar. 5, 1987; 101 Stat. 96; 2 pages) Price: \$1.00

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Price	Revision Date
1, 2 (2 Reserved)	\$9.00	Jan. 1, 1987
3 (1985 Compilation and Parts 100 and 101)	14.00	¹ Jan. 1, 1986
4	11.00	Jan. 1, 1986
5 Parts:		
1-1199	18.00	Jan. 1, 1986
1200-End, 6 (6 Reserved)	6.50	Jan. 1, 1986
7 Parts:		
0-45	24.00	Jan. 1, 1986
46-51	16.00	Jan. 1, 1986
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53-209	14.00	Jan. 1, 1986
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1060-1119	9.50	Jan. 1, 1986
1120-1199	8.50	Jan. 1, 1986
1200-1499	13.00	Jan. 1, 1986
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1900-1944	23.00	Jan. 1, 1986
1945-End	23.00	Jan. 1, 1986
*8	9.50	Jan. 1, 1987
9 Parts:		
1-199	14.00	Jan. 1, 1986
200-End	14.00	Jan. 1, 1986
10 Parts:		
0-199	22.00	Jan. 1, 1986
200-399	13.00	Jan. 1, 1986
*400-499	14.00	Jan. 1, 1987
500-End	23.00	Jan. 1, 1986
11	7.00	Jan. 1, 1986
12 Parts:		
1-199	11.00	Jan. 1, 1987
200-299	22.00	Jan. 1, 1986
*300-499	13.00	Jan. 1, 1987
500-End	26.00	Jan. 1, 1986
13	19.00	Jan. 1, 1986
14 Parts:		
1-59	20.00	Jan. 1, 1986
60-139	19.00	Jan. 1, 1986
140-199	7.50	Jan. 1, 1986
200-1199	14.00	Jan. 1, 1986
1200-End	8.00	Jan. 1, 1986
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0-299	10.00	Jan. 1, 1987
300-399	20.00	Jan. 1, 1986
*400-End	14.00	Jan. 1, 1987

Title	Price	Revision Date
16 Parts:		
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150-999	10.00	Jan. 1, 1986
1000-End	18.00	Jan. 1, 1986
17 Parts:		
1-239	26.00	Apr. 1, 1986
240-End	19.00	Apr. 1, 1986
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1-149	15.00	Apr. 1, 1986
150-399	25.00	Apr. 1, 1986
400-End	6.50	Apr. 1, 1986
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1-399	10.00	Apr. 1, 1986
400-499	22.00	Apr. 1, 1986
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§§ 1.301-1.400	13.00	Apr. 1, 1986
§§ 1.401-1.500	20.00	Apr. 1, 1986
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300-499	14.00	Apr. 1, 1986
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600-End	4.75	Apr. 1, 1986
27 Parts:		
1-199	20.00	Apr. 1, 1986
200-End	14.00	Apr. 1, 1986
28	21.00	July 1, 1986
29 Parts:		
0-99	16.00	July 1, 1986
100-499	7.00	July 1, 1986
500-899	24.00	July 1, 1986
900-1899	9.00	July 1, 1986
1900-1910	27.00	July 1, 1986
1911-1919	5.50	³ July 1, 1984
1920-End	29.00	July 1, 1986
30 Parts:		
0-199	16.00	⁴ July 1, 1985
200-699	8.50	July 1, 1986
700-End	17.00	July 1, 1986
31 Parts:		
0-199	11.00	July 1, 1986
200-End	16.00	July 1, 1986

Title	Price	Revision Date	Title	Price	Revision Date
32 Parts:			44	17.00	Oct. 1, 1986
1-39, Vol. I.....	15.00	⁵ July 1, 1984	45 Parts:		
1-39, Vol. II.....	19.00	⁵ July 1, 1984	1-199.....	13.00	Oct. 1, 1986
1-39, Vol. III.....	18.00	⁵ July 1, 1984	200-499.....	9.00	Oct. 1, 1986
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190-399.....	23.00	July 1, 1986	1200-End.....	13.00	Oct. 1, 1986
400-629.....	21.00	July 1, 1986	46 Parts:		
630-699.....	13.00	July 1, 1986	1-40.....	13.00	Oct. 1, 1986
700-799.....	15.00	July 1, 1986	41-69.....	13.00	Oct. 1, 1986
800-End.....	16.00	July 1, 1986	70-89.....	7.00	Oct. 1, 1986
33 Parts:			90-139.....	11.00	Oct. 1, 1986
1-199.....	27.00	July 1, 1986	140-155.....	8.50	⁷ Oct. 1, 1985
200-End.....	18.00	July 1, 1986	156-165.....	14.00	Oct. 1, 1986
34 Parts:			166-199.....	13.00	Oct. 1, 1986
1-299.....	20.00	July 1, 1986	200-499.....	19.00	Oct. 1, 1986
300-399.....	11.00	July 1, 1986	500-End.....	9.50	Oct. 1, 1986
400-End.....	25.00	July 1, 1986	47 Parts:		
35.....	9.50	July 1, 1986	0-19.....	17.00	Oct. 1, 1986
36 Parts:			20-39.....	18.00	Oct. 1, 1986
1-199.....	12.00	July 1, 1986	40-69.....	11.00	Oct. 1, 1986
200-End.....	19.00	July 1, 1986	70-79.....	17.00	Oct. 1, 1986
37.....	12.00	July 1, 1986	80-End.....	20.00	Oct. 1, 1986
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40 Parts:			3-6.....	17.00	Oct. 1, 1986
1-51.....	21.00	July 1, 1986	7-14.....	23.00	Oct. 1, 1986
52.....	27.00	July 1, 1986	15-End.....	22.00	Oct. 1, 1986
53-60.....	23.00	July 1, 1986	49 Parts:		
61-80.....	10.00	July 1, 1986	1-99.....	10.00	Oct. 1, 1986
81-99.....	25.00	July 1, 1986	100-177.....	24.00	Oct. 1, 1986
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190-399.....	27.00	July 1, 1986	400-999.....	21.00	Oct. 1, 1986
400-424.....	22.00	July 1, 1986	1000-1199.....	17.00	Oct. 1, 1986
425-699.....	24.00	July 1, 1986	1200-End.....	17.00	Oct. 1, 1986
700-End.....	24.00	July 1, 1986	50 Parts:		
41 Chapters:			1-199.....	15.00	Oct. 1, 1986
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201-End.....	1, 1986				
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430-End.....	15.00	Oct. 1, 1986			
43 Parts:					
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4000-End.....	11.00	Oct. 1, 1986			

¹ Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

² No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1986. The CFR volume issued as of Apr. 1, 1980, should be retained.

³ No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1986. The CFR volume issued as of July 1, 1984, should be retained.

⁴ No amendments to this volume were promulgated during the period July 1, 1985 to June 30, 1986. The CFR volume issued as of July 1, 1985 should be retained.

⁵ The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

⁶ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

⁷ No amendments to this volume were promulgated during the period Oct. 1, 1985 to Sept. 30, 1986. The CFR volume issued as of Oct. 1, 1985 should be retained.

